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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES
OCCURS THEM, 1959

No. 389

FEDERAL TRADE COMMISSION, PETITIONER

ANHEUSER BUSCH, INC.

ON WRITE OF CHARLEST AND THE DIFFERD STATES COURT OF

PETITION FOR CHICK-BARE SECRET REPRESENTATION 6, 1969
CHECKBERS CHARGES BUYEROUS 6, 1969
VOLUME 1-Period 1 to GR

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SINGLE APPENDIX IN LIEU OF SEPARATE APPENDICES

IN THE

United States Court of Appeals

For the Seventh Circuit

No. 12284

ANHEUSER-BUSCH, INC.

Petitione:

rs.

Set Aside Order and Decision of the Federal Trade Commission

FEDERAL TRADE COMMISSION

Respondent

Summary Statement Under Rule 16(b)

The proceeding is brought under Section 2(a) of the Clayton Act, 15 U. S. C. 13, better known as the Robinson-Patman Act, and involves a charge of price discrimination in the sale of beer.

On April 19, 1955 the case was docketed and the Hearing Examiner, Frank Hier, was appointed. On April 29, 1955 the complaint was served, and respondent's answer was filed on June 17, 1955.

On September 13 through 15, 1955, hearings were held in St. Louis, Missouri. On September 15, 1955 respondent

Summary Statement Under Rule 16(b)

moved on the completion of the case presented by counsel supporting the case, to dismiss the complaint. Brief was ed on September 21, 1955. The motion was denied on Setober 3, 1955 after argument.

On December 12 through 16, 1955 and May 15, 1956 continued hearings were held in Washington, D. C.

Proposed findings, conclusions of law and order, with memorandum of law, were filed by counsel supporting the complaint on July 17, 1956 and by respondent on August 17, 1956.

On October 22, 1956 an order of the Hearing Examiner closing the case was filed.

On October 25, 1956 the initial decision of the Hearing Examiner, and order to cease and desist were filed, together with the Hearing Examiner's rulings on the proposed findings, conclusions, and orders. These were served November 6 to November 8, 1956.

On November 13, 1956, a notice of appeal by respondent from Hearing Examiner's initial decision and order was filed.

On June 20, 1957, oral argument was had before the Federal Trade Commission on respondent's appeal from the order and decision of the Hearing Examiner, Commissioners Anderson and Kern not participating.

On September 10, 1957 an opinion and final order of the Federal Trade Commission, adopting the Hearing Examiner's initial decision and order to cease and desist after modification and order to file report of compliance were filed.

On September 18 through 20, 1957 the final order of the Federal Trade Commission was served.

An "Order correcting typographical error" by substituting a word in the final order dated September 10, 1957, was filed on October 4, 1957 and served on October 7, 1957.

(2)

Complaint

UNITED STATES OF AMERICA

Before Federal Trade Commission

In the Matter of Anneuser-Busch, Inc., a corporation.

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated the provisions of subsection (a) of Section 2-of the Clayton Agt (U. S. C. A. Title 15, Section 13) as amended by the Robinsen-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

Paragraph One: Anheuser-Busch, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 721 Pestalozzi Street, St. Louis 18, Missouri.

Paragraph Two: Anheuser-Busch, Inc., is primarily engaged in the sale and distribution of the alcoholic beverage beer under the brand name of "Budweiser" and "Michelob," "Michelob" is distributed solely as a draught beer while "Budweiser" is distributed both as draught beer and as a packaged beer, i.e., in bottles and in cans.

Both brands are nationally advertibed and enjoy wide public acceptance. Anheuser-Busch, in the sale of packaged beer, employs the basic unit of a case, the number of individual containers varying as to the size and type of container.

Anheuser-Busch, Inc., occupies a major position in the beer industry, being the nation's leading seller in 1953 and 1954 and is engaged on a nationwide basis in the manufacture and distribution of beer with manufacturing plants located at St. Louis, Missouri, Newark, New Jersey, and Los Angeles, California. Anheuser-Busch's gross domestic sales in 1954 were approximately 5,900,000 barrels.

(3) Anheuser-Busch, Inc., distributes its beer through many wholesaler-distributors located throughout the country who resell the commodity to dealers and dispensers in their trade areas. In certain metropolitan areas, distribution is effected through Anheuser-Busch, Inc., branches which sell directly to such liquor stores, chain grocery stores, bars, etc., generally termed "retailers."

Paragraph Three: Anheuser-Busch, Inc., in the course and conduct of its business has been and is now selling and distributing its beer in a constant stream of commerce from the States and places of manufacture to its customers and purchasers thereof located in States other than the States of manufacture of its product and there is now, and has been for many years, a constant current of trade and commerce, as "commerce" is defined in the Clayton Act, in said product between and among the various States of the United States and the District of Columbia.

Said product is sold and distributed for use, consumption, and resale in the various States of the United States and the District of Columbia.

Paragraph Four: Anheuser-Busch, Inc., in the course and conduct of its business is now, and during the times mentioned herein has been in substantial competition with others engaged in the manufacture, sale, and distribution of beer in commerce between and among the various States of the United States and of the District of Columbia.

Paragraph Five: Anheuser-Busch, Inc., in the course and conduct of its business has discriminated in price between different purchasers of its beer of like grade and quality by selling it to some of its customers at higher prices than to other of its customers.

Historically, Anheuser-Busch has sold and distributed beer on the basis of regularly established premium prices generally substantially higher than those prices charged by the various local and regional competing breweries located throughout the United States. Such premium prices were constantly in effect during the calendar year of 1953, in which year Anheuser-Busch became the nation's leading seller and distributor of beer.

As of January 1, 1954, Anheuser-Busch was the fourth leading seller of packaged beer in the area of St. Louis County, Missouri, which includes the (4) city of St. Louis. On January 4, 1954, Anheuser-Busch reduced its previously established regular premium price of beer in St. Louis County, with a resultant rise from fourth to third place in sales volume in St. Louis County. In no other area in the United States did Anheuser-Busch similarly reduce its regularly established premium price.

On June 21, 1954, Anheuser-Busch made a further reduction from the previously established regular premium price of its beer in St. Louis County, thus lowering the price of Budweiser to the point where it exactly matched the established price charged for beer by its local com-

petitors. Following, and as a result of, the above two reductions from its customary price, Anheuser-Busch became the leading seller of beer in sales volume in St. Louis County, Missouri, to which area its reduced prices were strictly confined. Prior to the foregoing price reductions Anheuser-Busch had approximately a 14% share of the packaged beer market in St. Louis county. Subsequent to, and as a direct result of, the foregoing price reductions, Anheuser-Busch captured approximately a 40% share of said market.

The above-described price reductions made by Anheuser-Busch through its St. Louis Branch to retailers in the St. Louis County area, on the various sized containers sold and the effective dates thereof are set forth below:

St. Louis Branch

Price to Retailers (Net)

12-31-53	1-4-54	6-21-51
2.93	2.68	.,)
3.29	3.16	2.81
3,29	3.16	2.83
3.41	3.41	2.96
3.80	3.65	3.11
2.90	2.75	2.60
1.67	1.60	1.51
6.68	6.40	6.08
3.34	3.20	2.99
	2.93 3.29 3.29 3.41 3.80 2.90	2.93 2.68 3.29 3.16 3.29 3.16 3.41 3.41 3.80 3.65 2.90 2.75 1.67 1.60 6.68 6.40

An example of the substantial price differences charged by Anheuser-Busch to its customers in St. Louis County following the above price reductions (5) from its established premium prices in comparison with the premium prices charged customers in other areas prior to and as of June 21, 1954, is herein set forth.

Washington Branch
Price to Retailers (Net)

Bottles	11-1-53	6-21-54
24/12 oz. Ret. Reg.	3.65	3.67
24/12 oz. N.R. Reg.	3.85	3.57
24/12 oz. N.R. 4/6	3.85	3.87
12/32 oz. N.R. Reg.	4.50	4.52
 12/32 oz. N.R. 6/2	4.50	4.52
36/7 ez. Ret.	3,65	3.67
Cans		
12/12 oz.	1.94	1.935
48/12 oz. 6/6	7.70	- 7.74
24 12 oz. Reg.	3.85	3.87

In no other area, served by one of its branches and at the times indicated herein, did Anheuser-Busch lower the customary premium price of Budweiser to the established price of regional or local competing beers. In all other areas of the United States Anheuser-Busch, in accordance with its customary practice, maintained the so-called differential in price between premium-priced Budweiser and the recently tower priced regional or local beers.

Compleint

Paragraph Six: The effect of such discriminations in price, as alleged in Paragraph Five herein, have been to divert substantial business from Anheuser-Busch's competitors to Anheuser-Busch, and have been and are sufficient to divert substantial business from competitors to Anheuser-Busch in the future; and there is a reasonable probability that the effects of Anheuser-Busch's said discriminations in price may be substantially to lessen competition in the line of commerce in which respondent and its competitors are engaged. The pricing practices of respondent also may tend to create a monopoly in the line of commerce in which Anheuser-Busch and its competitors are respectively engaged; or to injure, destroy, or prevent competition with Anheuser-Busch.

Paragraph Seven: The foregoing alleged discriminations in price made by respondent Anheuser-Busch, Lac., are in violation of subsection (a) of Section 2 of the Clayton Act, as amended.

(6) Wherefore, the Premises Considered, the Federal Trade Commission on this 19th day of April, A.D., 1955, issues its complaint against said respondent.

NOTICE

Notice is hereby given you, Anheuser-Busch, Inc., a corporation, respondent herein, that the 20th day of June, A. D., 1955, at 10 o'clock is hereby fixed as the time and St. Louis, Missouri as the place when and where a hearing will be had before Frank Hier, a hearing examiner of the Federal Trade Commission, on the charges set forth in this comptaint, at which time and place you will have the right under said Act to appear and show cause why an

order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the twentieth (20th) day after service of it upon you. Such answer shall contain a concise statement of the facts which constitute the ground for defense and shall specifically admit or deny each of the facts alleged in the complaint unless you are without knowledge, in which case you shall so state. Failure to file an answer to or plead specifically to any allegation of the complaint shall constitute an admission of such allegation.

If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Such answer will constitute a waiver of any hearing as to the facts alleged in the complaint and findings as to the facts and conclusions based upon such answer shall be made and order entered disposing of the matter without any intervening procedure. The respondent may, however, reserve in such answer the right to submit proposed findings and conclusions of fact or of law under Rule XXII, and the right to appeal under Rule XXIII.

Failure to file answer within the time above provided and failure to appear at the time and place exed for hearing shall be deemed to authorize the Commission and Hearing Examiner Frank Hier, without further notice, to find the facts to be as alleged herein and to issue the following order in this proceeding:

(7) It Is Ordered that the respondent, Anheuser-Busch, Inc., a corporation, engaged in commerce, as

"commerce" is defined in the Clayton Act, and its officers, representatives, agents, and employees, directly or through any corporate or other device in the sale of beer of like grade and quality, do forthwith cease and desist from discriminating, directly or indirectly, in price between different purchasers, where either or any of the purchases involved in such discrimination are in said commerce, by selling said product to any purchaser at prices higher than the prices at which said product is sold by respondent to any other purchaser where respondent in the sale of said product to the purchasers charged such lower prices, is in competition with any other seller.

The inclusion of such order to cease and desist in this complaint will be without effect in the event you show cause, on or before the 20th day of June, A. D., 1955, why such order should not issue.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 19th day of April, 1955.

By the Commission.

SEAL

s/ Robert M. Parrish Robert M. Parrish. Secretary. (12)

Answer

UNITED STATES OF AMERICA

Before Federal Trade Commission

Comes Now the Respondent Anheuser-Busch, Inc. and files its answer to the Complaint herein:

Paragraph One: Answering Paragraph One of the Complaint, Respondent admits the allegations of said paragraph.

Paragraph Two: Answering Paragraph Two of the Complaint, Respondent admits that it is primarily engaged in the sale and distribution of alcoholic beverage beer under the brand name of "Budweiser" and "Michelob" and that Michelob is distributed solely as a draught beer, while Budweiser is distributed both as draught beer and as a packaged beer, i.e., in bottles and in cans. Respondent further admits that in the sale of packaged beer it employs the basic unit of a case, the number of individual units varying as to the size and type of container. Respondent denies that both "Budweiser" and "Michelob" are nationally advertised and enjoy wide public acceptance, but admits that "Budweiser" is nationally advertised, although to a lesser extent than other beers, and (13) alleges that many other beers are advertised much more extensively than Budweiser beer is in certain areas of the United States. Respondent further admits that Budweiser enjoys public acceptance, but alleges that there are certain other beers that enjoy a public acceptance equal to Budweiser on a national basis and many other beers which in specific good caption! areas enjoy public acceptant substantially greater than Budwolser

Answer

Respondent admits that it was the nation's leading seller of beer in 1953 and 1954, that it manufactures beer at plants located at St. Louis, Mo., Newark, N. J. and Los Angeles, Cal., that it is engaged in the distribution of beer on a nationwide basis and that its gross domestic sales in 1954 of beer were approximately 5,550,000 barrels.

Respondent further admits that it sells its beer to many wholesaler-distributors licensed by State and Federal authorities located throughout the country who resell the commodity to licensed dealers and dispensers in their trade areas, and that in certain Metropolitan and other areas sales are effected through its branches directly to licensed liquor stores, chain grocery stores, bars, etc., generally termed retailers; except as so admitted, Respondent denies each and every allegation contained in Paragraph Two of the Complaint.

Paragraph Three: Answering Paragraph Three of the Complaint, Respondent admits that in the course and conduct of its business it has been and is now selling and distributing its beer in a constant stream of commerce from the States and (14) places of manufacture to some of its customers and purchasers thereof located in some of the States of the United States other than the States of manufacture of its product and there is now, and has been for many years, a constant current of trade and commerce as "commerce" is defined in the Clayton Act, in said products between and among some of the various States of the United States and the District of Columbia: except as so admitted, Respondent denies each and every allegation contained in Paragraph Three of the Complaint.

Answer

Paragraph Four: Answering Paragraph Four of the Complaint, Respondent admits the allegations of said paragraph.

Paragraph Five: Answering Paragraph Five of the Complaint, Respondent admits that on January 4, 1954 it reduced the price of Budweiser beer in St. Louis County; admits that on June 21, 1954 it reduced further the price of Budweiser beer in St. Louis County; admits that the prices set forth on the tables contained therein were the prices actually charged at the times indicated; except as so admitted, Respondent denies each and every aftegation contained in Paragraph Five of the Complaint.

Paragraph Six: Answering Paragraph Six of the Complaint, Respondent denies each and every allegation contained in said paragraph of the Complaint.

Paragraph Seven: Answering Paragraph Seven of the Complaint, Respondent denies each and every allegation contained in said paragraph of the Complaint.

(15) Affirmative Defenses: Respondent alleges:

- (1) That the difference from time to time between the prices charged by it in the sale of its products of like grade and quality to its different customers was and is necessitated by and made in good faith to meet the equally low prices of a competitor or competitors.
- (2) That the difference from time to time between the prices charged by it in the sale of its products of like grade and quality to its different customers was and is in re-

Answer

sponse to changing conditions affecting the market for and the marketability of the products.

- (3) That the difference in price of packaged Budweiser beer sold to licensed retailers in St. Louis, Mo. and Washington, D. C. was and is justified by differences in the cost of manufacture, sale and delivery.
- (4) That the maintenance of this action against Respondent is not in the public interest.

Wherefore, Respondent prays that said Complaint be dismissed.

Respectfully submitted,

Anheusen-Busch, Inc., Respondent

By Dwight D. Ingamells Dwight D. Ingamells, General Counsel

By Edgar Barton Edgar Barton

White & Case 14 Wall Street New York 5, N. Y.

By Harold F. Baker Harold F. Baker

Shoreham Building, Washington, D. C.

(262)

Initial Decision

Filed October 25, 1956

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

Frank Hier, Hearing Examiner

Francis C. Mayer and Philip R. Melangton, for the Commission;

Dwight Ingamells, St. Louis, Missouri, White & Case, by Edgar Barton and Howard J. Albel, all of New York, N. Y., and Gravelle, Whitiock & Markey, by Harold F. Baker, of Washington, D. C., for the regordent.

Formal complaint herein, issued April 19, 1955, charged respondent with price discrimination in violation of Section 2(a) of the Clayton Act, as amended (15 U. S. C. 13), in drastically cutting its price of beer in St. Louis and St. Louis County, while maintaining it elsewhere in the Nation, thereby causing substantial competitive injury to respondent's competitors in the reduced area through loss of sales to them and consequent gain to it. Respondent's answer, filed June 17, 1955, admitted descriptive and jurisdictional facts, the reductions and their amounts, denied discrimination and the effects alleged therefrom, and affirmatively pleaded that such price reductions were made in good faith to meet the equally low prices of competitors: Were made to meet changing nurket (263) conditions, and were justified by differences in the cost of manufacture, ale and delivery as between areas. After ten hearings,

resulting in 1118 pages of transcript, and 73 exhibits for the proponent, 217 for the respondent (one of the latter being 15 feet long), the trial wound up on May 15, 1956, after which proposed findings of fact, conclusions of law and briefs were filed with me by all counsel. Upon these and the remainder of the record in this case, I make the following:

FINDINGS OF FACT

- 1. Anheuser-Busch, Inc. (hereinafter referred to as A. B.) is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 721 Pestalozzi Street, St. Louis, Missouri.
- 2. A. B. is primarily engaged in the distribution and sale of alcoholic malt beverages under the branci names of "Budweiser," "Busch Bayarian," "Busch Lager" and "Michelob," "Michelob" is distributed solely as a draught beer, "Busch Bayarian" solely as a packaged beer, while "Budweiser" and "Busch Lager" are distributed both as a draught beer and as a packaged beer—in bottles and in cans. A. B. in the sale of packaged beer employs the basic unit of a case, the number of individual containers therein varying as to size and type. A. B. produces these beers in breweries located at St. Louis, Missouri, Newark, New Jersey, and at Los Angeles, California.
- 3. A. B. now occupies, and for many years has occupied, a major position in the brewing industry on a nation wide basis, as illustrated by the following comparative table:

	Total Paid Tax With irawals U.S.	A. B. Gross Sales	Percentage of Total	National Rank
1052	84,836,480 bbls.	6,034,443	7.11	2
1953	3 6,045,116 "	6,711,222	7.8	1
1954	83,305,402 "	5,828,760	7.0	1
1955	84,974,175 "	5,616,793	6.61	2

A. B.'s assets in 1954 were \$165,000,000.

- (264) 4. A. B. has been, and is now, selling its beers in a constant stream of commerce, as "commerce" is defined in the Clayton Act, from the states and places of manufacture to customers and purchasers located in other states, and there is now, and has been, a constant current of trade in such commerce between and among some of the various states of the United States and the District of Columbia in substantial competition with other brewers similarly selling and distributing beer in such commerce.
- 5. A. B. sells and distributes approximately 75% of its beers through some 700 wholesaler-distributors who resell to licensed dealers and dispensers in their individual trading areas, and approximately 25 percent through 18 branches of respondent, located in various metropolitan areas directly to bars, liquor stores, chain grocery stores and other retailers.
- 7 6. Beer production is widely diffused, primarily because it is a bulky product with high shipping costs relative to unit value. Other contributing factors are the great variety of laws and other regulations in the various states for licenses, the size of containers, the use and amount of advertising, and taxes. This has resulted in the creative containers.

tion and functioning of many local competitive trading areas, usually centering around one or more localized breweries, whose orbit of competition varies directly with the public acceptance of the taste, body, and effect of its particular brand, plus, of course, its financial resources and selling drive. Thus, there are beers which are sold only in one city, or one county, or only one state, or within a small mileage radius from the brewery which may cover parts of several states. These have been referred to in the record as "local" beers. Others sell throughout a multiple state area, but not nationally, in significant volume. These have been referred to as "regional" beers. Five brewers-A. B., Schlitz, Pabst, Miller and Blatz-because they sell and ship into all states in significant volume are referred to as "national" beers, and there are a few others. It is true, as respondent's counsel insist, that a given beer may be classed as regional in one place, local in another, and national in another and, therefore, the three terms have no fixed or constant meaning, competitively or price-wise. Nevertheless, they are handy, if loose, descriptions of their sales orbit, geographically, and the respondent itself in its sales surveys, memoranda and general business operations uses them. (265) purposes of this decision a "local" beer will mean one which is sold in substantial volume in three states or less, a "regional" beer, one which is sold in more than three but less than 48 states in substantial volume, and a "national" beer, one which is sold in such volume in all 48 states.

7. Retail distribution is through two distinct channels—off-premise and on premise consumption—package stores and supermarkets on the one hand—taverns, bars, and resources on the other. Practically all draught beer is considered.

sumed on-premise, and in 1934 after the repeal of prohibition, 75 percent of all beer produced in the United States was for on-premise consumption. However, since then, due perhaps to the increasing movement to the suburbs, television, and the broadcasting of sporting events, the decline of the tavern as a community social and recreation center, and the shorter work week, the flow had been almost reversed so that in 1954 only 35 percent of the beer produced was consumed on the premises. In 1934 there was only an insignificant amount of beer sold by grocery stores. Today more than 50 percent of all packaged beer consumed off-premise is bought in grocery stores.

- 8. All of the above distributive characteristics directly affect price and competition in any given market. There are many more. Most brewers price f.o.b. the brewery. To this must be added varying freight costs, taxes by states, counties and cities, and varying markups by distributor and retailer. Local social and economic conditions also have their effect. All of them are beyond the control of the brewers, yet the price to the consumer is controlled by them.
- 9. The complaint in this proceeding alleges that "historically, A. B. has sold and distributed beer on the basis of regularly established premium prices generally substantially higher than those prices charged by the various local and regional competing breweries located throughout the U. S." This allegation is denied and vigorously contested by respondent, which introduced voluminous statistical data to show the contrary. Counsel supporting the complaint do not claim this allegation to mean that there is a uniform or constant differential in price obtained by

A. B. over prices obtained by regional and local beers. They concede it varies from market to market in amount. that it varies on the various markets from time to time. and that there may be more than one differential in any given market; but they insist that in the great majority of markets there is some premium obtained by A. B. over the prices of its regional and local competitors. (26C) The record amply sustains this position. According to a survey conducted by respondent itself, of 78 major markets, considered by it to be a representative cross section of the country, out of 113,305 price comparisons between A.B.'s Budweiser beer and all other regional or local beers (so characterized by A. B.), 100,392, or 88.6%, showed a differential of 5¢ per bottle or can, or more, higher for Budweiser. Over local beers only, 93.2% of the price comparisons showed a differential up to 10¢ per bottle in favor of Budweiser. This same survey, comparing differentials as between May 1954 and October 1953, show many shifts and changes from no differential to a differential and vice versa, as well as many shifts in the amount of differential. but the fact remains that in the overwhelming majority of instances there was some differential. A September 1955, pendente lite new survey by A. B. reduces the above percentages in some degree, depending on the classification of one or more beers, nevertheless it does not change the picture that in by far the greater majority of markets and instances, on both the price to the consumer and to the retailer, Budweiser commands a higher price than local and regional beers. This statistical evidence is confirmed, particularly in its historical aspect, by the testimony of the qualified officials of A. B.'s three most competitive St. Louis competitors, who sell regionally over wide areas, and by a representative number of beer retailers, called by re-

spondent for other purposes. All of these testified categorically to that effect, and none of them could recall a single instance where Budweiser sold at the same price as the brands put out by the three St. Louis breweries adverted to above—always commanding some differential. Finally and conclusively, A. B. itself has published large advertisements, at the time of the St. Louis price reduction hereinafter described, stating:

"Now you can enjoy Budweiser at ordinary beer prices";

"The same Budweiser that still sells at premium prices around the world"; and

"The same Budweiser that outsells any other beer."

Such assertions broadcast by respondent to obtain or increase sales cannot now be gainsaid or watered down by respondent. The finding on this point, accordingly, is that most of the time, and in the large majority of the nation's markets, Budweiser was sold by A. B. at some favorable price differential or differentials over beers of local or regional distribution.

(267) 10. In the spring of 1953, the brewery workers' union struck all the plants of the national shipping Milwaukee brewers—Schlitz, Pabst, Millers, and Blatz—most of the "national" beers. The strike was drawn out until August of 1953, the settlement being for increased wages. A.B. was not struck and enjoyed substantial sales increases nationally with its national shipping Milwaukee competitors out of production. Although A.B. was not struck, it, too, signed a wage-increase contract, and, as a result, on October 1, 1953, it and its Milwaukee "national"



beer shipping competitors increased prices generally in varying amounts, depending upon locality. The three St. Louis brewer competitors of A. B .- Falstaff Brewing Corporation (hereinafter referred to as Falstaff), Griesedieck Western Brewery Company (hereinafter referred to as G. W.), and Griesedieck Brothers Brewery Company thereinafter referred to as G. B.) did not follow this raise in prices or make any increase in prices, continuing to sell in the St. Louis market (St. Louis and St. Louis County) at \$2.35 per 24, 12-oz. case of bottles, although many other regional and local brewers in other sections of the United States did so. There was, as a result, a decline in sales for the industry generally, and a sales decline for A. B. specifi cally from 418,667 barrels in November 1952, to 404,968 barrels in November 1953, nationally. Comparable figures for December of 1952, were 478,647 barrels as against 457,640 barrels in 1953. A sales graph comparing A.B. sales with industry sales, month by month, 1953 with 1952. shows industry sales in October 1953 even with October 1952, but A. B. sales 44% greater in October 1953 than in 1952, whereas in November 1953, A. B. sales were only 5% greater than in the same month of 1952, and industry sales 5% less, but in December 1953, industry sales were off only 8% compared with December 1952, whereas A. B. sales were 30% under 1952. In some states A. B.'s sales declines ranged as high as 83%. This, however, was not the picture in the St. Louis market, where A. B. and Falstaff gained in 1953 over 1952, as shown by the following table:

Barrels

	10	252	19	53
	November	December	November	December
A. B.	15,841	18,148	17,396	20.239
Falstati	20,796	24.973	24,547	29,218
G.B.	14,003	16.559	12,491	14,177
G.W.	30,715	35,471	26,731	32,500

(268) 11. As of January 3, 1954, A.B. was selling its standard 24/12 oz. cases of regular returnable bottles out of its direct-to-retailer branches at the following prices net to the retailer:

St. Louis, Mo.	\$2.93	Washington, D. C.	\$3,65
Chicago, III.	3.44	Detroit, Mich.	3,55
Cincinnati, Ohio	3.75		3,69
Houston, Texas	3.70	Kansas City, Mo.	3.15
Bronx, New York		St. Paul, Minn.	3,53
Kearney, Nebr.		Sioux Falls, S. Dak.	3.50
St. Joseph, Mo.	3.17	Denver, Colo.	
Buffalo, N. Y.	3.60	San Francisco, Calif.	3.79
Baltimore, Md.		Los Angeles, Calif.	3.80

12. Or January 4, 1954, on this same unit of sale, A.B. reduced its price from \$2.93 to \$2.68 in the St. Louis market, and again on June 21, 1954, cut its prices on the same unit of the same beer to \$2.35, which was and had been the price on the same unit charged and received by A.B.'s three above-named St. Louis brower competitors, A.B.'s price changes are shown by the following table:

24

Net to Retailer

Bottles	12-31-53	1-4-51	6.21.5
24 12 oz. Ret. Reg.	2.93	2.68	2.35
24/12 oz. N.R. Reg.	3.29	3.16	2.51
24 12 oz. N.R. 4/6	3.29	3.16	2.83
12 32 oz. Ret. Reg.	3.41	3.41	2.96
12 32 oz. N.R. Reg.	3.80	3.65	3.11
36/7 oz. Ret.	2.90	2.75	2.60
Cans			
12 12 oz.	1.67	1.60	1.51
48 12 oz. 8 6	6.68	6.40	6.08
24, 12 oz. Reg.	3.34	3,20	2.99
Draught			
Budweiser	12.98	12.98	12.48
Michelob	13.98	13.98	13.98

Nowhere else except in the St. Louis market did Λ . B. make the same or any comparable reduction in price.

(269) 13. From this, the complaint charges, and comsel in support thereof contends, that Λ. B. discriminated in price among its customers, namely, that by cutting and eliminating the price differential to its customers in the St. Louis market, it discriminated against its customers is other markets by continuing to charge them higher prices. Respondent contests this, claiming that because its prices vary from market to market, and are not level or uniform throughout the rest of the nation, that because the amounts by which its prices exceed those of local and regional brewers in those markets likewise vary, that in some few

markets there is no excess differential, that these differentials may change momentarily, and A.B. cannot alone maintain them, there can be no discrimination. arguments are all specious on this record. The fact is that in more than 80% of its markets, A.B. did set its prices to obtain such differentials--that it was obtaining them-that it did not cut its prices anywhere so as to eliminate or materially diminish them except in the St. Louis market, a situation which is the classic regional price discrimination, with competitively unimportant embroidery. Porto Rican American Tobacco Co. v. American Tobacco Co., 30 F. 2d 234; E. B. Muller & Co. v. F. T. C., 142 F. 2d 511; Moore v. Mead's Fine Bread Co., 348 U. S. 115; in re Maryland Baking Company, Docket 6327; in re General Foods Corp., Docket 5675; and others. The finding, accordingly, is that on January 4, 1954, and until June 21, 1954, and on June 21, 1954, and subsequent thereto until 1955, respondent did discriminate in the price of its beer, between its customers located in the St. Louis market and elsewhere by the price reductions in that market, above set out.

14. The St. Louis breweries distribute and sell as follows: A. B. in all 48 states; G. B. in 13 states, Alabama, Arkansas, California, Illinois, Indiana, Iowa, Kansas, Kentucky, Missouri, Mississippi, Oklahoma, Tennessee and Texas; Falstaff in 26 states in the West, Midwest, South, and Southeast; G. W. in 20 states, west to California, east to Pennsylvania, south to Georgia, and north to Wisconsin and Michigan. As of January 1, 1954, G. B. sold about 24% of its output in the St. Louis market, Falstaff about 14%, G. W. about 25%, and A. B. about 3½%.

15. For the year 1953, the respective shares of the St. Louis market in packaged beer by these four St. Louis brewers were: A. B. 12.5%, G. B. 14.4%, Falstaff 29.4%, and G. W. 38.9%. For the first six months of 1954, follow ing and (270) including the first price reduction by A. B. on January 4, 1954, but not including, to any appreciable extent, sales after the second price reduction on June 21, 1954, these market shares changed as follows: A. B. 16.55%, G. B. 12.58%, Falstaff 32.05%, and G. W. 33%, or, in terms of rank, G. W. remained first, Falstaff remained second, but A. B. replaced G. B. as third, the latter becoming fourth. During this time the total packaged beer sales for the first six months of 1954, as compared with the comparable 1953 period, increased from 5,947,144 to 6,110,326 statistical cases, or 2.7%. However, 122,991 of the cases, represented the increased sales of "all other beers," that is, beers shipped into the St. Louis market by breweries located elsewhere, such as Milwankee. so that the increase in total market package beer sales of 163,182 (6,110,326 minus 5,947,144) is in fact reduced to 40,191 cases, or an increase in total local brewery packaged sales of only .68%. With "all other [outside] beers" thus increasing in sales, it is obvious that A. B.'s increase in market share from 12.5% to 16.55% must have come from corresponding losses by G. B. and G. W. of 1.52 and 5.9% respectively. This first price reduction was accompanied by changes in, and a stepping up of, sales activity by A. B. by changing from telephone solicitation of orders to a route-wagon system of solicitation and delivery which converted every driver into a personal-solicitation salesman, and a great expansion of its advertising in the St. Louis market.

16. It was, however, after the June 21, 1954, price reduction by A. B. that the roof really fell in on the St. Louis market. As above set out, this reduction was from the January 4, 1954, price of \$2.68 per case of 24/12 oz. regular returnable bottles to \$2.35, exactly the same price, for the same unit, as G. B., Falstaff and G. W. had been selling at for a number of months. This reduction remained in force until March 1, 1955, shortly before formal complaint herein was issued, at which time A. B. increased its price to \$2.80 for the same unit. Shortly thereafter G. B., G. W., and Falstaff increased their beer prices on the St. Louis market for the same sales unit from \$2.35 to \$2.50. The differentials between A.B. and the other three mentioned brewers in the St. Louis market were thus 58e prior to January 4, 1954; 33e from January 4, 1954, to June 21, 1954; no differential from June 21, 1954, to March 1, 1955; and 30¢ thereafter, all differentials being in favor of A. B.

(271) 17. The impact of this second price reduction by A. B. on its own sales was to increase A. B.'s share of the St. Louis market progressively to the following percentages: July 37.6%; August 37.3%; September 37.5%; October 35.7%; November 34.1%; December 38.1%; January 1955 33.2%; February 1955 39.3%, whereas Falstaff's percentage share of the same market decreased from 29.6% in June of 1954 to 25.7% in July, 26.1% in August, 26.8% in September, 28.1% in October, 29.4% in November and December, 30.2% in January 1955, and 29.1% in February 1955. More striking decreases were suffered by the other two, G. B. declined from 11.2% in June 1954 to 8.3% in July, 8% in August, 7.9% in September, 7.8% in October, 8.8% in November, 7.9% in December, 5.3% in January, and 4.8%

in February of 1955. G. W. had 29.3% of the St. Louis market in June 1954; slid to 21.3% in July, 22% in August, 21.3% in September, 22.5% in October, 22.9% in November, 21.7% in December, 27% in January of 1955, and 23.1% in February of 1955. In rank A. B. jumped into first place by a wide margin and held that position throughout the eight-months' period. The St. Louis market, on the other hand, in total sales increased about 9.2% (9,174,278 [July 1954 through February 1955], as against 8,397,770 [same period 1953-1954]) or an increase of 776,508 cases. A. B., on the other hand, sold only 1,121,065 cases in the same period 1953-1954, but 3,380,648 cases during the comparable period July 1954-February 1955, an increase of 201.5%, or a tripling of case sales.

18. The full statistical and sales volume picture for both price reductions is shown by the following tabulations:

(272)

ST. LOUIS AND ST. LOUIS COUNTY-PACKAGE BEER

	ANHEU	AREA '	TOTAL S	ALES		
	Statistical Cases	Share of Total	% Change Previous Year	Statistice! Cases	Share of Total	Ti Chinge Teat
1954						
Jan.	107,283	14.0	+ 25.1	766,088	100%	+ (18
Feb.	121,620	14.5	+ 36.8	837,225	100%	4 30
Mar.	130,663	13.8	+ 31.3	949,409	100%	4 31
Apr.	165,853	15.6	+ 41.3	1,069,655	1(N)C	4102
May	165,526	15.5	+ 16.5	1,070,765	100%	- 35
June	320,127	22.6	+ 80.0	1,417,184	100%	- 03
July	542,779	37.6	+206.7	1,442,573	100%	+ 15
Aug.	475,897	37.3	+ 190.9	1,277,121	1(0)%	+ 10.2
Sept.	457,966	37.5	+199.6	1,220,501	100%	+ 38
Oct.	374,004	35.7	+163.2	1.050,467	1000	- 1.5
Nov.	335.326	34.1	+ 196.7	981,968	100 %	+11.0
Dec.	421,575	38.1	+194.3	1,105,990	100%	+ 32
Total	3,619,609	2".4	+ 126.5	13,188,946	100%	+ 35

ST. LOUIS AND ST. LOUIS COUNTY-PACKAGE BEER

283,564 219 47.8 1.346.5 100°C + 5.4 233,420 20.0 49.0 1,165.7 100°C - 4.5 172,962 19.0 53.9 911,64 100°C - 13.3 183,602 19.1 45.2 959.0 100°C - 2.3 219,220 20.7 48.0 1,061,488 .00°C - 4.6 2,982,962 23.0 - 17.6 12,936,647 100°C - 1.9 FALSTAFF 1955 250,712 32.7 + 16.6 250,185 36.2 - 0. 2,982,962 23.0 - 17.6 12,936,647 100°C - 1.9 FALSTAFF 1955 250,712 32.7 + 24.0 233,447 29.5 -25 349,016 32.6 + 27.8 351,055 27.5 + . 346,504 32.3 + 9.1 431,846 37.7 +21. 419,739 29.6 + 4.5 361,963 37.7 +21. 419,739 29.6 + 4.5 361,963 37.7 +21. 419,739 29.6 + 4.5 361,963 37.7 +10. 371,790 25.7 - 8.2 498,260 38.4 +24. 332,896 26.1 - 9.7 529,218 39.3 +59. 326,809 26.8 - 9.4 472,019 40.5 +44. 295,031 28.1 - 12.0 380,130 41.7 +28. 289,666 29.4 - 0.3 401,112 41.8 +38. 324,994 29.4 - 7.2 442,964 41.7 +36.	ANHEUSER BUSCH, INC.			AREA	* AREA TOTAL SALES		
497,598			αj	Previous	and the same of th	of	Previous
497,598							
193.478	27.	4.513	33.2	+155.9	827,783		
193,478	40	7.598	59.3	+.309.1	1.267,875	100%	
182.651			24.5	4 48.1	790,909	100cc	_
217.584				+ 10.1	936,458	100%	
257.641 21.0 - 19.5			19.0	+ 31.5	1.146.239	100%	
283,564 21 9			21.0	19.5	1.226.733	10007	
266,729 19.8 44.0 1,346,577 10075 + 5.4 233,420 20.0 49.6 1,165,795 10075 - 4.5 172,962 19.0 53.9 911,044 10075 - 13.3 183,602 19.1 - 45.2 95.0 10075 - 2.3 219,220 20.7 - 48.0 1,061,488 .0075 - 4.0 2,982,962 23.0 - 17.6 12,930,647 10075 - 1.9 FALSTAFF 1955 FALSTAFF 1955 1955 FALSTAFF 1955 1955 1955 1955 1955 1955 1955 1955 1955 1955 1955 1965 1965 1965 1965 1967			-	47.8	1.297,051	10000	10.1
233,420				44.0	1.340.5	1(4)0%	+ 5.4
172.962 19.0				49.6	1.165 .195	100%	4.5
183,602 19.1 - 45.2 959,0 100% - 2.3 219,220 20.7 - 48.0 1,061,488 .00% - 4.0 2,982,962 23.0 - 17.6 12,936,647 100% - 1.9 FALSTAFF 1955 250,712 32.7 + 16.6 250,185 30.2 - 0. 279,860 33.4 + 27.0 369,373 20.1 + 329 312,598 32.0 + 24.0 233,447 29.5 - 25 349,016 32.6 + 27.8 351,055 27.5 + . 346,504 32.3 + 9.1 431,840 37.7 +21 419,739 20.6 + 4.5 361,963 37.7 +21 419,739 20.6 + 4.5 361,963 37.7 +10. 371,790 25.7 - 8.2 498,260 38.4 +24. 332,896 26.1 - 9.7 529,218 39.3 +59. 326,809 26.8 - 9.4 472,019 40.5 +44. 295,031 28.1 - 12.0 380,130 41.7 +28. 289,066 29.4 - 0.3 401,112 41.8 +38. 324,994 29.4 - 7.2 442,964 41.7 +36.			_	53.9	911.004	100%	13.3
219,220 20.7 - 48.0 1,061,488 .00% - 4.0 2,982,962 23.0 - 17.6 12,936,647 100% - 1.9 FALSTAFF 1955 250,712 32.7 + 16.6 250,185 36.2 - 0. 276,860 33.4 + 27.0 369,373 26.1 + 32.9 312,568 32.0 + 24.0 233,447 29.5 - 25 349,016 32.6 + 27.8 351,055 27.5 + . 346,504 32.3 + 9.1 431,840 37.7 +2.1 419,739 20.6 + 4.5 361,963 37.7 +2.1 419,739 20.6 + 4.5 361,963 37.7 +10. 371,790 25.7 - 8.2 498,260 38.4 +24. 332,896 26.1 - 9.7 529,218 39.3 +59. 326,809 26.8 - 9.4 472,019 40.5 +44. 295,031 28.1 - 12.0 380,130 41.7 +28. 289,066 29.4 - 0.3 401,112 41.8 +38. 324,994 29.4 - 7.2 442,964 41.7 +36.						11416	2.3
FALSTAFF 1955 250,712 32.7 + 16.6 250,185 36.2 - 0. 279,860 33.4 + 27.0 369,573 29.1 + 32.) 311,598 52.9 + 24.0 233,447 29.5 - 25. 349,016 32.6 + 27.8 351,055 37.5 + . 346,504 32.3 + 9.1 431,840 37.7 +21. 419,739 29.6 + 4.5 361,963 37.7 +21. 419,739 29.6 + 4.5 361,963 37.7 +10. 371,790 25.7 - 8.2 498,260 38.4 +24. 332,896 26.1 - 9.7 529,218 36.3 +59. 320,809 26.8 - 9.4 472,019 40.5 +44. 295,031 28.1 - 12.0 380,130 41.7 +28. 280,066 29.4 - 0.3 401,112 41.8 +38. 324,994 29.4 - 7.2 442,964 41.7 +36.					1,061,488	7.00%	4.0
$\begin{array}{cccccccccccccccccccccccccccccccccccc$	2,98	2,962	23.0	- 17.6	12.936.647	100%	- 1.9
$\begin{array}{cccccccccccccccccccccccccccccccccccc$			FA				
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295,031 28.1 12.0 380,130 41.7 + 28. 289,066 29.4 0.3 401,112 41.8 + 38. 324,994 29.4 7.2 442,964 41.7 + 36	.3	32,896	26.1	9.7			
289,066 29.4 — 0.3 401,112 41.8 + 38. 324,994 29.4 — 7.2 442,964 41.7 + 36		26,809	26.8	9.4	472,019		
324,994 29.4 - 7.2 442,964 41.7 +36	2	295.031	28.1	12.0	380,130	41.7	
324,994 29.4 7.2 442,964 41.7 +36		89.066	20.4	- 0.3	401,112		
3,899,015 29.6 + 3.9 4,821.572 37.3 +23		•	20.4	7.2	442,964	41.7	+ 36.
	3.8	899,015	29.6	+ 3.9	4.821.572	37.3	+23.

ST. LOUIS AND ST. LOUIS COUNTY-PACKAGE BEER

GRIESEDIECK BROS.

	Statistical Cases	Share of Total	C. Change Previous Year	Statistical Cases	Share of Total	To be
1954	*		195.	5		
Jan.	00,40,3	130	-147	44,140	5.4	**
Feb.	107,151	128	12.7	(4),354	48	
Mar.	123.552	1.3 ()	10.3	68,314	211	- 44
Apr.	142,410	1.3.3	1.3	67,932	7.3	
May	137.814	12.9	16.2	84,108	7.3	- 14
June	158,008	11.2	= 21.9	89,437	7.3	- 414
July	120,201	8.3	46.2	87.713	6.8	1"
Aug.	101.682	8.0	32.7	94.746	7:1	
Sept.	96.171	7.9	30.4	78.320	61.7	
Oct.	81,672	78	428	60.488	11.11	
Nov.	30.067	8.8	- 30.5	62.782	65.51	17.
Dec.	87.256	7.9	8.08	69,068	6.5	-24
Testal	1.342.167	10.2	- 20.8	867,402	0.7	

GRIESEDIECK WESTERN

Total	3 365,011	27-11	2511	3 453.576	20.7	_ **
Dec.	230,007	217	.57.7	271.5 - 3	25 %	* 1
New	224,4%7	224	207	251,380	21, 1	~ [7]
Oct.	2.50 158	22.5	30.7	242,325	200	7
Sept	260 146	21.3	403	309,354	26.6	***
Aug.	280,740	33(1	32.3	362.833	300 11	- 17
July	307,126	21.3	47.1	348,354	_6 4	2114
June	414,170	211 2	250	540 9,36	27.8	- 175
May	.347.102	32.1	236	332.132	2011	1
Apr.	352.193	3214	10.5	271,0497	281)	
Mar.	3.38 18.1	350	= 10,3	206 ,00	21.1	- 34
Feb.	11 82.	14 17	11.6	264,- 263	2.3	
Jan.	7.3.1003		123	223.736	27 11	7.4
1954			105	5 ~		

I have rarely seen such a dramatic exhibition of economic power and price sensitivity in so short a time. Apparently the beer-consuming populace in the St. Louis market equates premium quality with premium price. The tremendous switch from other beers to Budweiser when the premium price was eliminated cannot, on this record, be otherwise accounted for. Apparently also it is the first 30c or less of premium or differential in price which touches off the reaction in the St. Louis market. Comparison of results from the January 4 1954 and Jane 21, 1954 reductions shows this.

(274) 19. This is further illustrated and confirmed by the reaction to the March 1, 1955, increase in price from \$2.35 to \$2.80—45c, the almost immediate increase of G.B., G.W. and Faistaff to \$2.50, or 15c increase—the differential then and since being 30c. Gain and loss in market shares is shown by the following tabulation:

	Dec. 31 1953	June 30 1954	March 1 1955	Julu 31 1955
A. B.	12.5	16.55	39,3	21.03
G. B.	14.4	12.58	4.8	7.36
Falstaff	29.4	32.05	29.1	36.62
G. W.	38.9	33.	23.1	27.78
All Others	4.5	5.82	3.94	7.21

It is obvious that A. B.'s gains during the "price experiment" came from G. B. and G. W. Respondent claims that if market statistics are run through February 1956, almost a year after the complaint was filed, they show A. B.

down to 17.9%. Regardless of what cut-off date is used. A. B. had only 12.5% of the market just before its first price reduction, but wound up after a price differential was re-estal "thed with from 18% to 21%, a gain of 5½% to 8½%. The ais, respondent characterizes as de minimis. But the record shows that such a percentage of market share in nearly every area of the United States is regarded by A. B. as highly significant if favorable, and highly dangerous if it is a loss.

- 20. This picture, counsel for the complaint contend, amply supports the effect charges of the complaint. Respondent's counsel, of course, contends the opposite. Their position boils down in reality to two points:
 - That the sales losses of competitors in the St. Louis market were caused by other factors than A. B.'s price reductions—factors unconnected therewith, and that the required effect has not been shown as a matter of law.
 - 2. That A. B.'s price reductions were merely a meeting of the equally low prices of its competitors in good faith—that it was simply "testing the market" of "price experimenting" in good faith to find answers to its loss of national off-premise sales.
- (275) 21. Before discussing these points some comment seems necessary on the basic charge in this case. Counsel seem to be solely preoccupied with the sites of injury—the St. Louis market—and to forget that the charge here is price discrimination and necessarily involving price differences between that St. Louis market and all other markets for A. B.'s products. The cutting of its premium

in the St. Louis market, and its subsequent elimination are not violations per se, they are violations only in comparison with the maintenance of higher prices elsewhere, whether premium or not, because such maintenance enables Λ . B. to continue profitable operation in more than 90% of its business to subsidize less profit or even no profit on its operations in the St. Louis market, and if competitor injury occurs there, violation of the charging law is prima facie made out.

- 22. Counsel supporting the complaint contend, of course, that the above statistical and market picture, together with the testimony of responsible officials of the three St. Leuis breweries, attributing all or the major part of their substantial sales losses in the eight months' period to A. B.'s price reduction amply sustains the charge that the latter diverted business to A. B., substantially lessened competition in the St. Louis market among these brewers, tended to create a monopoly in A. B. and injured, destroyed or prevented competition with A. B. The latter's counsel contend the negative of this factually and as a matter of law.
- 23. Factually they insist and have proved that G.W. had been progressively losing sales in the St. Louis market prior to 1954, that the management had likewise been maintaining a highly liquid cash position at the expense of renewal or (276) replacement of productive facilities, that it seld out to Carling Brewing Company in Octobe 1954, at a price which reflected the good will to be about one-fifth of realizable net worth, and that therefore it was not injured. Of course, good will being an intangible depends on many other things than sales potentiality alone.

As to G. B., respondent has shown that its sales too were progressively declining in the St. Louis market from a share thereof in 1950 of 18% to 14.4% in 1953, that in March 1954, G. B. replaced the beer it had theretofore been selling with an entirely new product which was badly named, poorly merchandised, bitter in taste and "wild" -that is, with an unstabilized air content, and offered the testimony of eleven saloon keepers and store-keepers that this new beer was disliked by the consumer, with the result that consumer sales thereof dropped sharply during the latter part of 1954, according to their testimony. None of this testimony was from retailers in the St. Louis market (which did and does seem most peculiar to me), but counsel assumes the same thing took place there--that the public taste was the same, or that the product defects were the same. Hence they claim G. B.'s sales loss was its own fault, not that of A. B.

24. Respondent prepared and introduced in evidence a sales graph showing actual packaged-beer sales in the St. Louis market for itself and its three principal competitors there for the years 1952, 53, 54, down to August 1955, and drew a "trend" line, averaged, equated or weighted, showing what would have been the average sales of each had no price upheaval taken place. This "trend" for 1954 and 1955 belies the contention that causes other than A. B.'s price reductions are the sole explanation for its competitors' sales losses. According to it, G. W. would have normally had, and in fact did have, in March of 1954, a market share of 35%; that absent price raids, and based on the previous 27 months' performance, its share would have decreased from 35% to 30.75% by February 1955. In fact, however, G. W. sank precipitately to about 26% in

July 1954, and never thereafter approached its projected trend until after the price increase in March 1955. same thing is true for G. B., although in less exaggerated fashion. There the losses ranged from about 3% below trend in July 1954, to about 6% below trend in February 1955. Furthermore, prior to the June 1954 price reduction of A. B., G. B.'s largest sales decrease over the same month or year previous had been 16.2%, but thereafter the comparable percentage loss ranged from a low of 30.5% to a high of 55.6%. The argument of counsel for respondent that the testimony of eleven retailers from outside the St. Louis market of their customers' dissatisfaction with (277) G. B.'s new beer and the falling off in sales thereof for that reason was the real reason for G.B.'s sales losses in the St. Louis market, rather than A. B.'s price reductions, is refuted by a comparison of G. B.'s sales in es as between the St. Louis market and the rest of its selling area. Thus exhibits show sales losses of G. B. in the St. Louis market for the last six months of 1954 at 38.44% of the last six months of 1953, whereas a comparable figure for the rest of G.B.'s territory was only 19.32°, Comparable figures for the first six months of 1955 were 45,90% for the St. Louis market and 29,49% for outsid St. Louis. The conclusion is that A. B.'s price. reductions in the St. Louis market were not the insignifi- & cant factor counsel contends, but greatly accelerated an existent slow but steady sales decline in that area of G. B. and G. W. It is one thing to descend several flights of stairs yourself; it is quite another to get thrown down the last flight by others. Murder is none the less murder, even though the victim, medically, may not have long to live.

25. As to the third major St. Louis competitor, Falstaff, respondent seems to argue that because it has eight breweries strategically located in six states, and was, prior to 1954, progressively selling more beer each year and only lost about 4% market share during A. B.'s price reductions, no injury can be found, since Falstaff only had about 14.4% of its business in the St. Louis market. this record abundantly shows that a much smaller percentage of business in any market is regarded as vastly important to A.B. Why then assume that 14.4%, 20% or 25% of total business are not vital to its competitors? It is significant that July of 1954 was the first month in 18 in which Falstaff showed a decrease in sales over the corresponding month of the previous year, and that decreases consistently continued throughout 1954, reaching a 32% loss in February of 1955. After A. B. again raised its price on March 1, 1955, Falstaff's interrupted upward march was resumed. The conservative sales estimates of Falstaff, projected for 1954 by Falstaff as to what it expected for 1954, based on immediate past performance. show them far more than realized after A. B.'s price reductions, with the exception of one month, December 1954. Unlike G. B. and G. W., Falstaff is a picture of arrested and reversed progress, rather than acceleration of decline: but nevertheless fulfills the prescribed statutory requirement of effect, just as fully, although perhaps not as vividly. Since these three brewers, excluding A.B., account for the overwhelming volume of beer sold in the St. Louis market, the picture is one not only of injury to competitors but of injury to their (278) line of commerce. As a factual matter, then, the finding is that A. B.'s successive price reductions, which discriminated price-wise against its customers in other markets, did divert sub-

stantial business to A. B. from its competitors in the St. Louis market; did substantially lessen their competition in their line of commerce, and did tend to create a monopoly, and had the potentialities to continue to do so.

26. Respondent contends, however, that as a matter of law, such a finding cannot be made and carefully reviews seven area price-discrimination cases, four by the courts, three by the Commission, which have dealt with territorial price discriminations. Porto Rican American Tobacco Co. v. American Tobacco Co., 30 F. 2d 234; E. B. Muller & Co. v. F. T. C., 142 F. 2d 511; Moore v. Mead's Fine Bread Co., 348 U. S. 115; Maryland Baking Company, F. T. C. Docket 6327; Balian Ice Cream Co. v. Arden Farms Co., 104 F. Supp., 231 F. 2d 356; Purex Corp., Ltd., F.T.C. Dacket 6008; General Foods Corp., F. T. C. Docket 5675. Purex, and General Foods were dismissed, no causal relationship between price discrimination or price differences and competitive injury being shown; the remainder resulted in orders to cease and desist or decrees or judgments. Respondent's counsel contends these latter are no precedents because (a) they all involved a single injuree, where as here there was more than one competitor in the area of reduction; (b) they all involved a demonstrated intent to eliminate that single competitor; (c) the price reduction was either below that of the intended eliminee, or below the eliminator's cost; and (d) the discrimination was continued long enough to cause serious injury to or destruction of the intended eliminee. I am unable to agree that the seems of the statute is limited to injury to just one competitor. True, the resultant contraction of competition is clearer in such a situation, but the statute contemplates injury to the line of commerce in which respondent is en-

gaged, and that is present here. All of A.B.'s major competitors lost substantial business. Furthermore, there were a number of smaller competitors involved in the General Foods case—that case was not dismissed because of that, but solely because the Commission found that instead of losing business, a number of them had gained. Interto eliminate a competitor, not being required to be shown. is immaterial here. Underentting, or selling below cost, furnish a clearer picture of injury and predatory intent, but no case holds it to be a sine qua non of injury, actual or potential, or tendency to monopoly. Similarly, no case holds complete destruction of a competitor necessary before injury (279) is found-neither death nor mayben are essential. The facts here show a distinct probability of the one, if not the other, if A. B.'s price raid had continued longer, or indefinitely; and we are here concerned not only with actual injury but with potential injury as well, and there is nothing in this record to show that what A. B. did in the St. Louis market, could not or would not be done by it, in the future, in other markets as well. Respondent's reliance on quotes from the General Foods opinion is misplaced, since the targets of the respondent's discriminations there were found to have a fined business and not to have been injured, that being he sole ground of dismissal. Furthermore, in line with those cases is the economic strength here of the respondent. A. B. has total assets of more than twice those of its three St. Louis brewery competitors, and, selling nation-wide as it does, is able, although there is no proof that it did, to use income or profit from the rest of its business to stabilize losses, if any, incurred in such a price raid. I repeat, there is no showing that it did, but the record shows it could-the petentiality is there. The fact that the St. Louis market

produced only a small fraction of its total business is immaterial in the face of its over-all size and strength, but the fact that its St. Louis competitors were dependent on the St. Louis market for a substantial segment of their business points up not only the size disparity but the extent of the injury.

27. Taking up now respondent's second contention, it is true that lower prices to consumers is the goal of a freeenterprise system, but it must not be done so as to discriminate and benefit some customers at the expense of others, except under stipulated circumstances, such as meeting the equally low price of a competitor. As construed by the Supreme Court in F. T. C. v. A. E. Staley Mfg. Co., et al, 324 U.S. 746, Section 2(b) places emphasis on "individual competitive situations, rather than upon a general system of competition," and further, in Standard Oil Company v. F. T. C., 340 U. S. 231, that "wherever a lawful lower price of a competitor threatens to deprive a seller of a custome, the seller, to retain that customer, may in good faith meet that price." From these, proponent's counsel argue that since A.B.'s price action was admittedly aggressive rather than defensive, its defense must fail. Respondent's counsel rely on the Balian case cited above, which seems to reject this interpretation. But the factual setting in that case was markedly different. I believe there is a fair implication in Staley and Standard Oil, that Section 2 b) was intended not to absolve price (280) discrimination for aggressive purposes but is him ited to and available only to retain business. Such is not the case here. Instead of losing sales to competitors by reason of their lower prices, A. B. had been slowly but steadily gaining, prior to the price raid of 1954. Thus,

from 1945 on it had shown, except for 1947, a consistent gain in its share of the St. Louis market from a low of 5.8% to 12.5% for 1953, and a comparable gain, of course, in absolute numbers of cases sold. Market rank had advanced from a very poor sixth to a close fourth. There is nothing in this record to show, that although it was losing business nationally in the off-premise sales channel, that it was losing business in the St. Louis market or in any imminent danger of doing so. Secondly, these price reductions were ordered by its president for two admitted reasons: 'to get business away from its competitors, and to punish them for refusing to increase prices when A.B. did so in the fall of 1953. Apparently the lesson was well taught and better learned, because those three St. Louis breweries promptly followed A. B. up with price increases in March 1955, and were eartful to keep the price ditference between them and it at less than the 33 cents whose elimination had cost them so much sales volume. Thirdly, A. B. did not just meet, it beat competition. True. as counsel sarcastically comments, \$2.35 equals \$2.35 and not \$2.30; but numerical prices by themselves can be mileading because they can be superficial. A.B.'s beer at \$2.35 was in the same quantity as its competitors', and selling at the same dollars and cents figure, but at \$2.55 it was selling more value than its competitors were, by the ultimate test of any market the consumer himself. Whether it be called "public acceptance" or "superior public acceptance," the consumer has proved, and A.B. is profiting thereby, that the former will, in most markets, pay more for Budweiser than it will for many other beers -clear proof that such consumer believes that he is getting more in quality, taste, effect or what not, from Budweiser than from others in the same product category for the

same money. The tremendous sales surge to Budweiser away from G. B., G. W., and Falstaff in the St. Louis market, after June 21, 1954, when the consumer could buy all of them at the same price, is dramatic evidence of this. The statistical picture set out above in Paragraphs 17, 18, and 19 also shows that this switching to Budweiser, in the St. Louis market at least, starts at a premium of about 35c a case of 24 12 oz. bottles. Below that spread consumers evidently think, in substantial numbers, whose substantiality increases as the spread decreases, that they are getting more, cent for cent, from Budweiser than they are from the beers of G.B., G.W., (281) and Falstaff. Counsel cites Standard Oil Co. v. F.T. C., 233 F. 2d 649, as rejecting and "laying to rest" this reasoning. Without discussing whether the language does in fact fully reject, suffice it to say that that case is on appeal and not yet finally decided. Support for such reasoning is found in E. B. Muller & Co. v. F. T. C., 142 F. 2d 511, and in F. T. C. v. Standard Brands, Inc., 189 F. 2d 510, in neither of which was it expressly rejected, and in both of which it was an argued and briefed issue. Nor do I believe that the Court's remarks thereon were "chance." The finding on this point is that Budweiser has wide public acceptance geographically, and superior public acceptance in most markets, not because it does or has sold more than regional or local beers in any given market, but in the sense that in most markets the consumer will pay a higher price for it than for local or regional competitive beers.

28. Respondent's counsel urge that A.B.'s St. Louis price raid was "price experimentation" and "testing the market" for the purpose of finding a solution to serious competitive and distributional problems, and that this is

Instead Decision

evidence of its "good faith." These were: A.B.'s in ability to match in every market the intensive advertising done there by local or regional browers who were able to concentrate an entire budget in a small area, whereas V B. had to scatter its shots over the nation; the freight disselvantage over local beers which had no freight to be added, and regionals with less than A. B.; decentralization, by the purchase of local breweries; and steady contraction of its principal channel of distribution on premise sale, which accounted for 60% of its distribution. Although A. B.'s sales nationally and through all channels were the aghest in the nation, its off premise sales, particularly through grocery stor had been steadily declining. Whose as about 75% of industry beer sales were off-premise and the remainder on premise, A. B.'s ratio was almost the reverse of the industry. To meet these problems, A. E. conducted various surveys and field tests to determine market conditions, and sent out questionnaires to its distributors and wholesalers, asking their remedial sague-Various solutions were considered; smaller a packages of Budweiser to sell at the same prices through off premise outlets, particularly grocery stores; new beers to sell at, or about, the same prices as competitors' local and regional beers; and expanded advertising and sales promotion. Sometime between the fall of 1953 and early in 1954 A. B.'s management decided on a reduction in container size-10 oz. cans or bottles in place of 12 oz. to sell at or near the price of competitive local and regional 12-oz. size: in other words, (282) to sell less beer for the same price as more beer of others. Implementing this was a long and tedious problem because of the tax, warehousing. and production problems it raised, and because of the many variam state regulations, some of which, by law, fix beer

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container sizes, others of which, rest discretion in Alcoholic Beverage Control Boards. The 25c price reduction of January 4, 1954, in the St. Louis market did produce mereased off-premise as well as on premise sales, but the results were considered by A. B. as not definitive, and the Jane reduction was ordered. Counsel claims the spectacular results thereof made it clear to management that the solution lay in marketing the 10 oz. container wherever possible, as against a 12-oz, competitive container, but also to bring out a new and cheaper beer. This latter was determined upon in the fall of 1954 and placed on the market in March of 1955, and proved a flop. Then A. B. brought out a still different cheaper beer under different merchandising techniques in August 1955, but the record does not show its degree of success.

- 29. On the above basis, counsel contend that A.B.'s price reductions were to obtain market information with which to formulate a long-range marketing policy, and to "bay time" by "competing on a price basis until such new long-range policies could be placed in effect," and conclusively establish A.B.'s good faith.
- 30. In my opinion, however, the sales considerations which respondent alleges as the reasons for this "experiment," taken at full value, do not ontweigh the contrary factors discussed in Paragraph 28 above. I cannot, however, take them at full value. The "experiment" clearly demonstrated that lower prices on Budweiser was the answer to volume, both on-premise and off-premise; but obviously A. B. did not want that answer, and certainly did not follow it. It wanted an answer which would enable it to keep Budweiser up in price; above its competitors, but

Init at Decision

still obtain more volume by other means—sheaper "figly mg brand" beer or less quantity for the same price, because that is what A. B. undertook and since has done. And it is interable from the record that these two expedients were pretty well determined upon by or before Jane of 1954. It is questionable whether the Jane reduction was in fact a seeking of an answer, as alleged. Furthermore, why an eight months' experiment when three months trial produced, so far as the record goes, equally as good statistical sales results as the eight months?

(283) 31. The conclusory finding is that respondent's 1954 price reductions in the St. Louis market were not made in good faith to meet the equally low prices of competitors.

The order proposed by counsel in support of the equiplaint, after the usual injunction against discrimination, finishes with "and where such lower prices reduce in any consequential amount the theretofore existing different in price between respondent" product and the product any of such other sellers, unless respondent reduces all prices in all areas by the same percentage." Entry of this order is refused because:

- The key word "consequential" is vague and indefinite and, on the record, varies so from market to market as to have no meaning, hence would be impossible of compliance or enforcement.
- 2. The words "theretofore existing differential" are likewise incapable, in many instances, of definascertainment, and therefore incapable of compliance or enforcement. This obviously means the has for price which respondent obtains in most markets for its beer over other beers, but there are beers which

command a higher price than Budweiser in some markets. That spread, too, is a "theretofore existing differential."

The fact that different quantities have different differentials, whether "theretofore existing" or not, makes the order as submitted unworkable.

CONCLUSIONS OF LAW

- 1) To reduce price in one area, while maintaining them in all other areas, is discrimination in price wit is the prohibition of Section 2(n) of the Chayton Act, provided the required effects follow therefrom, regardless of whether there is a uniform price or varying prices in the unchanged areas.
- 2. Accelerating an existing downward sales trend, or arresting and reversing an upward sales trend of competitors, is evidence of the required statutory effect.
- (284) 3. Partial recovery from competitive injury suffered during a period of price discrimination, when the latter is abandoned or partially abandoned, does not excuse its employment.
- 4. The good faith requirement of Section 2(b) of the Clayton Act is not met where a price discrimination, with the required resultant competitive effect, is for aggressive eather than defensive purposes,
- The law does not require that a competitor be test out of business completely or permanently, or irretrievable crippled, by a price discrimination before a finding of the prescribed competitive effect can be made.

ORDER

In Is Ordered that the respondent, Anheuser-Busch, Inc., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in the sale of beer of like grade and quality, do forthwith cease and desist from discriminating, directly or indirectly, in price, between different purchasers, where either, or any, of the purchases involved in such discrimination are in commerce, as "commerce" is defined in the Clayton Act, by a price reduction in any market where respondent is in competition with any other seller, unless it likewise reduces its prices for the same quantity of beer everywhere by the same percentage.

Frank Hier Frank Hier Hearing Examiner

October 23, 1956

(417)

Final Order

UNITED STATES OF AMERICA

Before Federal Trade Commission

Commissioners:

John W. Gwynne, Chairman Robert T. Secrest Sigurd Anderson William C. Kern Edward T. Tait

This matter having been heard by the Commission upon respondent's appeal from the hearing examiner's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and

The Commission having determined, for the reasons appearing in the accompanying opinion, that respondent's appeal should be denied and that the order contained in the initial decision should be modified:

It Is Ordered that the order contained in the initial decision be, and it hereby is, modified to read as follows:

It Is Ondered that the respondent, Ard aser-Busch, Inc., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in the sale of beer of like grade and quality, do forthwith case and desist from discriminating directly of pathwith, in price, between different purchasers engaged in the case has of commerce, where either, or any, of the purchasers invoived in such discrimination are in commerce, as "commerce" is defined (418) in the Clayton

Final Order

Act, by a price reduction in any market where respondent is in competition with any other seller, unless it proper tionally reduces its prices everywhere for the same quantity of beer.

It Is FURTHER ORDERED that the findings, conclusions, and order, as modified, contained in the initial decision, be, and they hereby are, adopted as those of the Commission.

It Is Further Ordered that the respondent, Anheuser Busch, Inc., shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order contained in the initial decision, as modified.

By the Commission, Commissioners Anderson and Kern not participating.

[SEAL]

s/ Robert M. Parrish Robert M. Parrish. Secretary.

Issued: September 10, 1957.

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Opinion of the Commission

UNITED STATES OF AMERICA

Before Federal Trade Commission

Docket No 6331

Commissioners:

John W. Gwynne, Chairman Robert T. Secrest Sigurd Anderson William C. Kern Edward T. Tait

By Tait, Commissioner:

The respondent in this proceeding is charged by the complaint with price discrimination in violation of Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act (15 U. S. C. 13). Specifically, it is alleged that respondent in connection with the sale of beer made two successive price reductions in the area of St. Louis

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Section 2(a) provides in part as follows: "That it shall be unlawful for any person engaged in conductor, in the course of such according to the directly of indirectly, to discriminate in price begands and mility, and the particles accorded in such discrimination and where such a summation is are add tor use, consumptions of which is a United States of Tarrier to Columbia or any inside passessing to a place to the conduction or and where the effect of accommunition may be substantially to be an competition or tend

County, Missouri, from its previously established regular premium price for that area, and that it made no similar price reductions in any other area. It is charged that by so doing respondent discriminated in price between different purchasers (420) of its beer of like grade and quality with the effect, among other things, of diverting substantial business from respondent's competitors to the respondent.

The hearing examiner, in an initial decision filed October 25, 1956, found that the allegations of the complaint were sustained by the record and ordered respondent to cease and desist such practices. Respondent has appealed from the initial decision.

Respondent, Anheuser-Busch, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its principal place of business located in St. Louis, Missouri, is primarily engaged in the manufacture, distribution and sale of alcoholic beverage beer under the brand names Budweiser and Michelob, Respondent distributes and sells beer nationally. It has plants located in St. Louis, Missouri, Newark, New Jersey, and Los Angeles, California, and is one of the nation's leading brewers.²

² Anheuser-Busch's national rank 1952 to 1955 is shown by the toilowing table.

	Total Paid Tax	Anheuser- Busch Gross Sales	Percentage of Total	National Kunk
1932	84,836,480 bbls.	0,031,113	7.11	2
1953	86,045,116 blds.	6,711,222	7.8	1
11154	83,305,402 bbbs.	5.828.7(4)	7.0	1
14155	81,971,173144	5,616,793	6.61	2

In some areas respondent sells its beer to wholesaler-distributors who resell it to licensed dealers and dispensers in their trade areas; and in other areas, including that around St. Louis, respondent sells directly to liquor stores, chain grocery stores, bars, and other outlets generally termed "retailers." Approximately 25% of respondent's beer sales are made through its branch operations, while sales to wholesaler-distributors account for the remaining 75%.

of manufacturing facilities due mainly to high shipping costs relative to unit value. Thus, there is found throughout the country many beers of local or regional geographic distribution. A few brewers sell beer in every state or nearly every state. These are the so-called "national" beer shipping companies, and include Blatz, Miller's, Pabst, and Schlitz of Milwaukee, Wisconsin, as well as Anheuser-Busch, the respondent.

Throughout the country, respondent's product, Budweiser, is generally sold at some higher price than beers of local or regional distribution. While there is no uniform or constant differential, in the great majority of markets Budweiser is priced over its regional or local competition. This is established in the record by various surveys, the results of which are corroborated by the testimony of both retail and competitor witnesses. Moreover, respondent itself has advertised Budweiser as a premium priced heer. As an example, it was advertised as "the same Budweiser that still sells at premium prices around the world."

In the St. Louis area, respondent's principal competitors are three regional brewers: Falstaff Brewing Corpo-

ration, Griesedieck Western Brewing Company, and Griesedieck Brothers Brewery Company (hereinafter referred to as Falstaff, G.W. and G.B., respectively). Prior to 1954, these competitors sold beer in the St. Louis area at prices substantially less than the price of Budweiser. The prices of the regional competing beers were in each instance \$2.35 per case.³ Respondent's price was \$2.93 per case, a differential of \$.58. Respondent first reduced its price on January 4, 1954, to \$2.68 per case, leaving a new differential of \$.33. Thereafter, on June 21, 1954, respondent again reduced its price, this time to \$2.35 per case, at which price it was exactly matching the prices of its regional competitors. The following table indicates the complete price changes made in St. Louis by the respondent in this period.

(422)

(4)	Net to Retailer		
Bottles	12-31-53	1-4-54	6-21-51
24/12 oz. Ret. Reg.	2.93	2.68	2,35
24 12 oz. N.R. Reg.	3.29	3.16	2.81
24/12 oz. N.R. 4/6	3.29	3.16	2.83
12/32 oz. Ret. Reg.	3.41	3.41	1 ()45
12 32 oz. N.R. Reg.	3.80	3,65	3.11
36/7 oz 17 4.	1111)	2.75	2.60
Cans:			
12/12/07.	1.417	1.60	1.51
48 12 02. 8 6	6.68	6,40	(* -
24 12 oz Rog.	2,34	3,20	2.99
Draught			
Lindweiser	1.174		
11	13.95	13.95	1.1.98

³ Case, as used herein unless otherwise indicated, refers to the standard case of 24–12 ounce regular returnable bottles.

On January 3, 1954, respondent was selling standard 24-12 ounce cases of regular returnable bottles from its branches net to the retailer at the following prices:

St. Louis, Mo.	\$2.93	Washington, D. C.	\$3,65
Chicago, III.	3,44	Detroit, Mich.	3,55
Cincinnati, Ohio	3.75	Boston, Mass.	3,69
ligiston, Texas	3.70	Kansas City, Mo.	3.15
Brons, New York	3.68	St. Paul, Minn.	3.53
Kearney, Nebr.	3.68	Sioux Falls, S. Dak.	3.50
St. Joseph, Mo.	3.17	Denver, Colo.	
Buffalo, N. Y.	3.60	San Francisco, Calif.	3.79
Baitimore, Md.	3.62	Los Angeles, Calif.	3.80

Respondent, however, made no price reductions anywhere else in the United States similar to those made in the St. Louis area. As a result of maintaining higher prices to all purchasers outside of the St. Louis area and charging the lower prices, as reduced in 1954, to only those customers in the St. Louis area, respondent discriminated in price as between purchasers differently located.

(423) The price reductions of 1954 remained in effect with March, 1955, at which time respondent increased its price 45¢ per case. Its new higher price was then \$2.80 per case. Falstaff, G.B. and G.W. almost immediately increased prices to \$2.50 per case, or 15¢ over their prior prices. This resulted in a new differential of 30¢ per case.

One of the principal issues raised on this appeal is whether or not respondent's price reductions in 1954, reduces in discriminations in price between purchasers, is such as to have an injurious effect on competition within the meaning of Section 2(a). The hearing examiner

found that respondent's price discriminations had the effect of diverting substantial basiness to Anheuser-Busch from its competitors in the St. Louis market; the effect of substantially lessening competition in the line of commerce in which Anheuser-Busch and its local competitors are engaged; and the further effect of tending to create a monopoly and having the potentialities to continue to do so.

Prior to the price reduction by respondent in January. 1954, G. W. was the leading seller in the St. Louis market followed by Falstaff, G. B. and Anheuser-Busch. Immediately thereafter, respondent rose to third in volume of sales and G. B. dropped to fourth. Following the June. 1954, price reduction, Anheuser-Busch became the leading seller in the area with Falstaff second, G. W. third and G. B. fourth. Respondent held its first place position in the market throughout the eight months of the full price reduction, from July, 1954, through February, 1955. During this period, the total market sales increased only about 9.2% as against the same period for 1953-54, while respondent, comparing its sales for the same periods, eljoyed an increase of 201.5%, a tripling of sales. On the other hand, Falstaff, G. B. and G. W. during the period of the price reductions lost in their volumes of sale as well as their respective shares of the total market in the St. Louis area. The losses of G. B. and G. W. were partical larly large. Comparing the eight months of the full reduction with the same prior period, G. B.'s sales were cut by about 41% and G. W.'s about one-third. In the following table the (424) gains made by the respondent are compared with the losses incurred by its major competition in the St. Louis market:

SALES IN STATISTICAL CASES 4

July 1953 - Feb. 1954 July 1951 - Feb. 1955

Anhenser-		
Busch	1.121,065	3,380,648
Falstaff	2,601,665	2,560,144
Griesedieck		
Brothers	1,152,369	678.143
Griesedieck		
Western	3,074,537	2,065,335
All Others	448,134	490,908
Total Market	8,397,770	9,174,278
		1 - 1 - 1 - 1

The relative positions of the various competitors in the St. Louis market around the time of respondent's price reductions in 1954, as expressed in shares of the total market, may be shown as follows:

			1	
	Dec. 31 1953	June 30 1954	March 1 1955	July .:1 1955
A. B.	12.5	16.55	39,3	21,03
G. B.	14.4	12.58	4.8	7.36
Falstaff	29.4	32.05	29.1	36.62
G. W.	38.9	33.	23.1	27.78
All Others	4.8	5.82	3.94	7.21

⁴A statistical case means the equivalent of the standard 21/12 oz. case.

G. B. and G. W. had been having progressively less sales volume in the St. Louis market for several years prior to the price reductions by respondent, and thus it is reason; bie to expect that their sales under ordinary circumstances would have continued downward at about the same rates. The trends (425) of their losses, however, do not indicate that their sales reverses in the 1954-55 period would have been anywhere nearly as severe if respondent had not so sharply reduced its prices. Falstaff, on the other hand, had been showing progressive gains in sales prior to the period of the price reductions, and according to this trend but for the reductions, Falstaff would not have lost sales, as it did, but would have shown a substantial increase.

Taking into account all of the factors which may have affected the sales of the various competitors in the St Louis market, it is evident that only respondent's price reductions could have had such a general adverse effect on the market. No other circumstance will account for the fact that, while respondent more than tripled its sales most of its competition suffered such serious declines. This almost speaks for itself. Respondent's gains could only have been made at the expense of competition since the falls sales in the St. Louis market did not increase by any stid substantial amount as the sales of respondent and the state combined increase in sales by all of the other competitute could not begin to account for the losses experienced. Falstaff, G. B. and G. W. Respondent's price discrimitations manifestly resulted in a substantial diversion of suifrom competitors to itself. The gravity of the effect of the sales losses on these competitors is readily apparent for the showing that the St. Louis market accounted for 14

of Falstaff's sales, 24% of G.B.'s and 25% of G.W.'s. Moreover, in connection with the effect on competition, respondent's relative size in the beer industry cannot be disregarded. In 1953, the total sales of Budweiser of 6,711,222 barrels was in excess of even the combined total sales of its three leading St. Louis competitors. Their total sales in 1953 were as follows: Falstaff 2,911,393 barrels, G.W. 1,483,631 barrels, G.B. 778,142 barrels. Clearly respondent's discriminations in price had the effect of substantially lessening competition in the line of commerce in which Anheuser-Busch, Falstaff, G.B. and G.W. are engaged. We believe that the hearing examiner's findings in respect to competitive injury are amply supported by the record and free of error.

Respondent's next contention in this appeal is that it is entitled to a finding that its price reductions were made in good faith to meet the equally low price of a competitor within the meaning of Section 2(b) of the (426). Clayton Act, as amended. On the basis of the record in this case, we cannot agree.

Su non 2 des provides as follows:

Then proved being made, at any bearing on a conclusive section, that there has been descrimination in prove or facilities furnished, the burden of relating the permanent as made by showing from atom shall be mount a person with a violation of this action, and inches premium of all stocks showing the County tones authorized to assue an integrate distribution in Transfer long the permanent shall prevent a seller training the permanent factors to take his showing that has have pure at the number of facilities to any purchaser or time server to the next an equally has proven a general training the permanent of the next an equally has proven a general training the permanent at the next an equally has proven a general training the permanent and the next an equally has proven a general training the permanent and the next an equally has proven a general training the permanent and the next an equally has proven a general training the permanent and the next an equally has proven a general training the permanent and the next an equally has proven a general training the permanent and the next an equality has proven and a constant of the next an equality has proven an expectation.

The justification provided by Section 2(b) for discrimination in price contrary to the provisions of Section 2(a) is essentially a right of self-defense against competitive price attacks. Standard Oil Co. v. F. T. C., 340 U. S. 231.

In this instance, respondent's purpose could not have been to protect its sales volume in the St. Louis market, against an invasion by competitors. Its sales and share of the total market had been steadily increasing. None of the competitors constituted any threat at that time to respond ent's relative position in the St. Louis market. In fact, the sales of two of its major competitors had been on the down grade for some time. Respondent argues that, while not losing sales in the St. Louis area, it had been having decreases in sales volume in other markets served by its St. Louis plant. This, however, would not justify the lowering of prices in the one market in which respondent had experienced no losses. The emphasis of Section 2(b) is en individual competitive situations rather than upon a gen eral system of competition. F. T. C. v. A. E. Staley Mia. Co., 324 U. S. 746. If respondent was faced with an indi vidual competitive situation which it had to meet, it clearly was ted in the St. Louis area. However more advantage ons it may have been for respondent to lower its prices there, by so doing it has no defense under 2(b).

(427) Prior to the price reductions of 1954, Budwiser was sold at a considerably higher price in St. Louis that most of its competition and not only retained but steadily improved its sales volume in that market. After the pricinerenses of March 1955, when there was again a differential in price between Budweiser and the regional begins of St. Louis, respondent's product continued to seil also

volume greater than that in the years prior to the price reductions. It is evident that Budweiser could and did successfully command a premium price in the St. Louis market as it has in most of the other markets in the nation. The test in such a case is not necessarily a difference in quality but the fact that the public is willing to buy the product at a higher price in a normal market. Clearly, therefore, respondent's reduction from the premium price to match, the prices of the regional beers on the market was not a meeting of competition. The effect was to undercut competition. The huge gains which respondent made at the lower prices testifies to that fact. Under the circumstances, respondent cannot justly claim that it was meeting competition.

Considering all the factors, we conclude that the hearing examiner was warranted in finding that respondent's 1954 price reductions in the St. Louis market were not made in good faith to meet the equally low prices of competitors.

Finally, on this appeal, respondent contests the appropriateness of the order contained in the initial decision. It contends, for one thing, that since all the findings as to injury relate to the St. Louis market, the only lawful order which can be entered is one confined to that market. There is not merit in this. As to territorial extent, a respondent having been found guilty of a violation of the Act may properly be required to cease and desist such practices in all areas in which it is doing business. The Maraland Bak and Company v. F. T. C., 243 F. 2d 716.

Respondent also argues that the order requires a uniform percentage reduction in all markets. Such an order,

the point is made that since differentials vary from market to market, a price reduction might actually result under the order in bringing the price of Budweiser in a great many markets below (428) that of the regional beer. This argument assumes that every price reduction neces sitates reductions everywhere. In fact, the order does not preclude respondent from differentiating in price in a new competitive situation involving different circumstances where it can justify the discrimination in accordance with the statutory provisos. Nor is the respondent precluded under the order, if the circumstances are not substantially similar, from lowering its price in good faith to meet an equally low price of a competitor. F. T. C. v. Ruberoid Company, 343 U. S. 470.

Respondent'also comments in its brief that this is an · extraordinary Robinson-Patman Act order in that, unlike the usual order requiring uniform prices, it allegedly requires Anheuser-Busch to charge different prices in different markets in perpetuity. As indicated above, the order does not necessarily require differences in price hereafter since the statutory provisos are implicit in the order Moreover, since the order is directed to discriminations it price, there is nothing therein to prevent respondent from charging all of its purchasers the same or uniform prices if it so chooses. On the other hand, if the order was worked so as to require respondent to maintain uniform prices this, if anything, would be contrary to market realities Respondent's prices vary in the different markets in which it, sells, resulting in differences which, with the exception of the price discriminations charged in the complaint, at not in issue in this proceeding. This order, while in calls

permitting the continuation of these price differences, serves to prevent disproportionate price reductions or discriminations in price beyond the established differences among markets, such as the price discriminations found to be unlawful. The form of the order is entirely appropriate in the circumstances. The order should be modified, however, so that it will be clear its application extends only to prices charged to purchasers engaged in the same line of commerce. Also we have inserted the term "proportionally" in lieu of "percentage" to avoid possible rigidity of interpretation.

Respondent's appeal is denied. It is directed that the order contained in the initial decision be modified in accordance with the views herein expressed.

Commissioners Anderson and Kern did not participate in the decision herein.

September 10, 1957.

Order Correcting Typographical Error

UNITED STATES OF AMERICA

Before Federal Trade Commission Docket No. 6331

Commissioners:

John W. Gwynne, Chairman Robert T. Secrest Sigurd Anderson William C. Kern Edward T. Tait

> In the Matter of Anneuser-Busch, Inc., a corporation.

Whereas, the Commission issued its Final Order in this proceeding September 10, 1957; and

Whereas, it appears that the Final Order through sense inadvertence contains the word "purchasers" rather that the word "purchases" immediately following the words "in the same line of commerce, where either, or any, of the"; and

It having been determined that a correction of this typographical error should be made:

Order Correcting Typographical Error

Ir Is Ordered that the Final Order be, and it hereby is, corrected by the substitution of the word "purchases" for the word "purchasers" immediately following the words "in the same line of commerce, where either, or any, of the" contained therein.

By the Commission, Commissioners Anderson and Kern not participating.

SEAL

Robert M. Parrish, Secretary.

Issued: October 4, 1957

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

To the Honorable Judges of the Court of Appeals for the Seventh Circuit:

Petitioner Anheuser-Busch, Inc., a corporation, pursuant to Section 11 of the Clayton Act (15 U. S. C. 21), respectfully requests this Court to review and set aside an order and decision of the Federal Trade Commission, respondent herein, entered in the Matter of Anheuser-Busch, Inc., a corporation, Federal Trade Commission Docket No. 6331, and respectfully shows:

I. Jurisdiction and Venue

Petitioner at all times mentioned herein was and is a corporation duly organized and existing under and by virtue of the laws of the State of Missouri, with its principal place of business in the City of St. Louis. This proceeding is brought by petitioner under Section 11 of the Claytor Act (15 U. S. C. 21) to review and set aside the aforesaid order of the Federal Trade Commission. Venue is based upon the provision of that section permitting any person required by an order of the Federal Trade Commission to cease and desist, to obtain judicial review by filing a writted petition with the Court of Appeals within the Circuit where in such person carries on business or wherein the violation is claimed to have been committed. Petitioner carries of

business in Illinois, Indiana and Wisconsin, and has a branch in the City of Chicago, Illinois, from which it sells directly to retailers. The prices at which petitioner sells its beer from its various branches directly to retailers form the basis of the charge of price discrimination in the complaint.

II. A Concise History of the Proceedings

On or about the 19th day of April, 1955, the Federal Trade Commission issued its complaint against petitioner alleging, with certain jurisdictional averments, that the petitioner had violated Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act (15 U. S. C. 13), in reducing the price of its beer for a limited period in one county of the United States "to the point where it exactly matched the established price charged for beer by its local competitors", while maintaining its various prices elsewhere in the nation. While it alleged that your petitioner's prices varied among markets, it is not claimed that such differences violated the statute. The only price differences in issue were those resulting from the temporary price reduction in the single county of St. Louis County (decision of the Federal Trade Commission, page 7).

Thereafter, on or about June 17, 1955, petitioner filed its answer to said complaint in which it denied price discrimination within the meaning of the statute, and further defied the required statutory effects which are necessary to a finding of violation. Petitioner affirmatively pleaded integralia the statutory defenses that the difference in trices charged by it was and is necessitated by, and made

in good faith to meet, the equally low prices of a competitor or competitors, and that said difference in prices charged by it was and is in response to changing conditions affecting the market for and the marketability of its products.

Hearings were thereafter held in St. Louis, Missouri and Washington, D. C., during September and October, 1955 before Examiner Frank Hier. At the conclusion of the complainant's case, your petitioner moved to dismiss the complaint. The Hearing Examiner at that time stated to the proponent of the complaint:

"Mr. Mayer " " I say to you now, you have got a mighty slim case here as it now stands. Now, what comes after this, I don't know.

"The reason I am going to deny the motion [to dismiss the complaint]—the reasons are perhaps three. First of all, I am satisfied, Mr. Barton, Mr. Baker and the rest of you gentlemen, the Commission, issuing this complaint when it did, on the heels of the General Foods case, intended to have a full dress inquiry. And I am satisfied, therefore, that if I dismiss it, and he took it upstairs, which he naturally would, back it would come seven or eight months from now, and you would have to go through with it anyhow." (Transcript p. 344)

As a result of this ruling, which was apparently based on matters completely alien to the merits of the Commission's case previously presented, your petitioner there after put in its defense. It set forth for the Commission a picture of the intricate distribution machinery of the

beer industry, the revolutionary marketing changes and problems which faced and still face your petitioner resulting in reduced sales throughout the country and the efforts to meet this competitive problem.

On or about October 25, 1956, the Hearing Examiner filed with the Federal Trade Commission his report upon the facts and his conclusions of law. He found that there are many "distributive characteristics [which] affect price and competition in any given market" and that "all of them are beyond the control of the brewers" (Hearing Examiner's initial decision, par. 8). He did not question that the prices charged by your petitioner to all competing purchasers in the one area in issue were identical. He found that of the four brewers whose beer constituted almost all the beer sold in the St. Louis market, your petitioner had the smallest sales in that market prior to its price reduction. The Hearing Examiner did not question that petitioner's principal competitor in St. Louis and elsewhere throughout the midwestern states, Falstaff Brewing Corporation, was and is the fourth largest brewer in the na tion that its sales had been growing steadily over a period of years, and that it controlled 29.4% of the St. Louis market immediately prior to your petitioner's price reduction ia St. Louis in January, 1954. The Hearing Examiner found that during this initial six month price reduction, your petitioner's prices were still higher than Falstaff's and that this competitor's growth in sales and share of the market continued unabated and grew to 32% of all beer sales in the market. He found that your petitioner reduced its prices again in St. Louis from June, 1954 to February, 1955 to a point where it exactly equalled that of all its competi-

tors, including l'alstaff. He found that Falstaff's share of the market temporarily slipped off in one month to a point where it still had more than 25% of the market and that thereafter its share of the market continued to grow. By July 31, 1955 Falstaff had 36.6% of the market. In the fourth quarter of 1955, it controlled 42% of the market. It was found that any sales losses suffered by other competitors were caused in large part by factors within the control of those competitors, and were occurring in areas where there was no alleged price reduction by petitioner.

It is uncontradicted that prior to its two price reductions, your petitioner had been losing sales on a nation-wide basis to Falstaff. It is uncontradicted that during the period of these price reductions, your petitioner was continuing experiments in new types of packaging, changed methods of merchandising and distribution, as well as the production of new brands in order to find a solution to its sales losses throughout the nation. It is uncontradicted that the only place in which the price reduction could be practicably made were in the one county where they were made—St. Louis. It is uncontradicted that the results of these tests were to place new brands and new packages into production and distribution as soon as they were developed.

Nevertheless, the Hearing Examiner entered an order directing the petitioner to cease and desist from discriminating, directly or indirectly, in price, between different purchasers of petitioner's beer of like grade and quality where either, or any, of the purchasers involved in such any market where [petitioner] is in competition with any

other selier unless it likewise reduces its prices for the same quantity of beer everywhere by the same percentage".

Petitioner timely appealed from the Hearing Examiner's initial decision and order, and oral argument was had before the Federal Trade Commission. On or about September 10, 1957, said Commission, with two of the five Commissioners not participating, determined that petition er's appeal to it should be denied. The Commission's opinion recognized (page 7) that "uniform prices * * * would be contrary to market realities". It adopted the findings of the Hearing Examiner, and various existing prices are permitted to stand by the order, including those now in effect in St. Louis County, which are lower than elsewhere in the nation. The order, entered by the Federal Trade Commission, as amended by an order correcting "certain typographical errors", provided:

"It is ordered that the respondent, Anheuser Busch, Inc., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in the sale of beer of like grade and quality, do forthwith cease and desist from discriminating, directly or indirectly, in price, between different purchasers engaged in the same line of commerce, where either, or any, of the purchases involved in such discrimination are in commerce, as 'commerce' is defined in the Clayton Act, by a price reduction in any market where respond at is in competition with any other seller, unless a proportionally reduces its prices everywhere for the same quantity of beer.

"It is further ordered that the findings, couch sions and order, as modified, contained in the initial decision be, and they hereby are, adopted as those of the Commission."

Said order further provides that the petitioner shall, within 60 days after service of said order, file with the Commission a report in writing setting forth in detail the manuer and form in which it has complied with said order. Said original order of the Federal Trade Commission and order correcting typographical errors were served upon petitioner on or about September 18, 1957, and October 4, 1957, respectively. The time provided by the order for filing said report was extended by agreement between the Commission and petitioner, and this petition to review and set aside said order is filed within such period.

III. Grounds for Relief

The bases of the decisions and orders sought to be reviewed appear to be:

A. That there is injury to the competition within the meaning of the statute if competitors temporarily lose less than 7% of their annual sales for a limited period of time and if part of this loss may possibly be attributed to petitioner's price reductions. It is submitted no other affirmative finding of the Hearing Examiner or of the Commission supports a finding of injury to competition within the meaning of this statute. There was a complete and atter lack of evidence that petitioner sold below cost—or even below competitors' prices—and the Hearing Exam-

iner and Commission so found. The underlying theory of the order sought to be reviewed must be that in a highly competitive industry where there are four active sellers in one market, temporary loss of sales in that market by some of them to the seller with the smallest sales in that market constitutes injury to competition. The underlying theory must be that such injury results as a matter of law despite the fact that the leading seller in that market controlled 29% of the particular market before your respondent's price reductions, and controls 42% of the market after your petitioner's price reductions. Additionally the curious rationale behind the decisions and orders appears to be that but for your petitioner's price reductions, such competitor's gains would have been larger and that injury to competition may be inferred therefrom.

B. That your petitioner's price reductions were not made in good faith to meet the equally low price of a competitor or competitors, although the Commission had found, as the complaint alleged, that petitioner's reduced prices "exactly matched" those of its competitors. The Commission asserted that the meeting competition defense of Section 2(b) is "essentially a right of self-defense" and then theorized that "none of the competitors constituted any real threat at that time to respondent's [petitioner's] relative position in the St. Louis market" (Commission's decision, p. 6) despite the fact that (1) your petitioner ranked fourth among the four principal brewers in said market prior to its price reductions, (2) your petitioner was experiencing serious sales reverses in a wide area outside St. Louis to Falstaff, and (3) that the leading com-

petitor in St. Louis, Falstaff, had grown to be fourth largest brewer in the nation and was still growing although its national sales area includes only one-third of the national population.

The Hearing Examiner and the Commission theorize that your petitioner's prices actually "undercut" competitors' even though such reduced prices were higher that and equalled those of its competitors. They theorized that your petitioner's price reductions did not "meet" but "undercut" competitors because for a period of time prior to said price reductions, your petitioner's prices were higher than those of its competitors, i.e., that it sold at a "differential" or "premium". Implicit in this theory of the Commission is the assumption that if a manufacturer once decides to try to sell some beer at a certain price rather than to try to sell more beer at a lower price, it mas forever maintain its original position and has no freedom to alter it despite a change in circumstances in individual markets. The Commission so assumed although it expressly recognized that every beer market is different and that the statute permits different prices in different markets.

The further assumption of the Commission's theory is that petitioner predetermines or fixes premiums when in fact "differentials" or "premiums", if any, are determined by the prices not only of petitioner but also of its competitors. Without such an assumption that petitioner fixes premiums there is no basis for treating "premium" prices differently from other prices. It is not alleged that, and the record is completely devoid of anything to indicat that, petitioner set or sets its competitor's prices. Indeed

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Petition To Review and Set Aside Order of Federal Trade Commission

the record and explicit findings show that there are many "distributive characteristics [which] affect price and competition in any given market" and that "all of them are beyond the control of the brewer". It is not alleged that, and the record is completely devoid of anything to indicate that, petitioner set or sets "premiums". Indeed, the record amply demonstrates, and it has been found, that the se-called "premium" varies substantially in amount from time to time and from place to place, and in fact that there are frequently several "premiums" in any one market—all because of the differing prices of its competitors.

In its ruling, the Commission also theorized that in an attempt to stem its serious sales losses a manufacturer may not temporarily lower its prices while experimenting with new packages, products and merchandising in the only place where it was practicable to do so "however more advantageous it may have been". It concluded, for this narealistic reason, too, that petitioner's prices higher than, or equal to its competitors' at all times were not made in good faith to meet the equally low price of a competitor or competitors.

C. That an order of the Federal Trade Commission may exceed the scope of the facts shown despite the injury to the public and to petitioner that may result therefrom. The order and decision recognize that the statute does not require uniform prices. However, under the Commission's order, any price reduction in one market requires a proportionate price reduction in all other markets. Under the facts as found by the Hearing Examiner and by the Commission, price differentials vary from market to market

and from time to time. Consequently, reductions in one market 'if made proportionately in other markets may, and on the Commission's findings actually will, bring your petitioner's prices considerably below competitors' prices in other markets. If the price reduction here litigated in jured competition within the meaning of the statute when your petitioner's prices were exactly the same as its competitors, then almost necessarily prices below those of its competitors would injure competition within the meaning of the statute. The Commission's order, therefore, not only exceeds the permissible scope of an order but actually runs counter to the purposes and intent of the statute.

Moreover, petitioner is henceforth barred from meeting the frequent and variable price changes in individual markets which the Commission found to be characteristic of the beer industry. A price change in one market must be matched by a proportionate change in each of the approximately 1,000 other markets despite the fact that petitioner's competitors in these other markets may be changing their prices by varying amounts or not at all and that there are many "distributive characteristics [which] affect price and competition in any given market".

Petitioner, deeming itself aggrieved and believing that the aforesaid cease and desist order of the Federal Trade Commission is unwarranted, unlawful and rests upon a decision containing numerous palpable errors which are not sustained in fact or law, files this petition for review, and submits that respondent Federal Trade Commission erred in issuing its said order and decision against petitioner, in that

- A. The findings and conclusions accepted by and made by the Federal Trade Commission are contrary to the facts.
 - B. Said findings and conclusions are contrary to law.
- C. There is insufficient evidence from which the Commission can lawfully conclude that anything petitioner has done is or has been to the prejudice of the public, or had the effect of "injuring" competition within the meaning of the statute or constitutes price discrimination in violation of Section 2(a) of the Clayton Act, as amended by the Rebinson Patman Act.
- D. The evidence shows that the prices of petitioner in issue were offered in good faith to meet the equally low price of its competitor or competitors, which by terms of the statute and decisions of the Supreme Court of the United States, is an absolute defense.
- E. There is insufficient evidence from which the Commission can lawfully conclude that petitioner's prices in issue, which at all times were higher than or equal to those of its competitors, were not offered in good faith to meet the equally low prices of a competitor or competitors.
 - F. The said order and decision of the Commission is unwarranted in scope under the circumstances presented in the record herein and exceeds the jurisdiction of the Commission.

IV. Relief Prayed

Wherefore, petitioner respectfully prays that this Court review the aforesaid proceedings and the order to cease and desist entered thereon, and set aside said findings, conclusions and order, as well as direct the Commission to dismiss its complaint against petitioner and to award such further or alternative relief as may seem just and proper to the Court.

Dated: March 17, 1958.

Anneuser-Busch, Inc., Petitioner

Edgar Barton
Edward Wolfe
of White & Case
14 Wall Street
New York 5, New York
Attorneys for Petitioner

DWIGHT INGAMELLS
Of Counsel

Transcript of Hearings

BEFORE THE

FEDERAL TRADE COMMISSION

In the Matter

of

Anneuser Busch, Inc., a corporation Docket No. 6331

Courtroom No. 1, Federal Building, St. Louis, Missouri, Tuesday, September 13, 1955.

Met, pursuant to notice, at 10:00 a.m.

Before:

Frank Hier, Hearing Examiner.

Appearances:

- FEANK MAYER, Esq., and PHILIP R. MELANGTON, Attorneys for the Federal Trade Commission.
- Dwight Ingamells, Esq., General Counsel, Anheuser-Busch, Inc., St. Louis, Missouri, for the respondent.
- Edgar E. Barton, Esq., Howard J. Aibel, and William D. Conwell (of White & Case, 14 Wall Street, New York, New York), for the respondent.
- HARGLE F. BAKER, Esq. (of Sanders, Gravelle, Whitlock and Markey, Shoreham Building, Washington, D. C.), for the respondent,

Transcript of Hearings

(2)

PROCEEDINGS

Hearing Examiner Hier: This is the initial hearing in Docket 6331, Anheuser-Busch, Inc. All counsel, I know, are thoroughly familiar with the rules of procedure and the evidentiary rules, and there is no necessity of going into that.

I know that you are also familiar with my custom of starting at 9 in the morning, with the exception of the first day. However, if daily or faster copy is ordered, I generally adjourn in the afternoon whenever the reporters notify me that they have had all they can digest that day. Otherwise, we run until 4:30 or 5 o'clock in the afternoon, depending upon how the case goes,

One thing which I think might be noted is that it is annecessary for counsel to take exceptions. Unless there is some objection, the record may show that counsel of both sides have an automatic exception to everything I do or say on the record in this room, and you may use that a a basis for appeal if you think it is warranted.

I do not think of anything else that needs to be said in advance except, perhaps, that we are in donated quarters. No smoking, no newspapers in this room,

Mr. Mayer.

Mr. Mayer: Mr. Examiner, we would like to call Mr. Hallquist.

(3) Hearing Examiner Hier: Come around, sir.

JOHN HALLQUIST, Jr., was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. Mayer:

Q. Mr. Hallquist, would you give us your business address, please, sir?

A. Yes, sir. Anheuser-Busch, Inc., 721 Pastalozzi Street, St. Louis, Missouri.

Q. How long have you been associated with the Anheuser-Busch Company, sir?

A. Twenty-nine years.

Q. In your association with the company in what capacities have you been employed by the company!

A. Starting at the beginning or at the present date!

Q. At your convenience.

A. Well, at the present time my title with the company is Director of Sales Training. I went into position supposedly in January, 1954. However, because of the business circumstances I have never functioned in that capacity and from January 1, 1954, to date I have been on special assignments for the salesmanager of the company and the president of our company.

Prior to that time I was salesmanager of our Midwest (4) region, which comprises the States of Missouri, Kansas, Iowa, Nebraska, North and South Dakota and Minne sota. I was in that position for about fifteen months.

Prior to that time I was in charge of the branches for Anheuser-Busch, and of course prior to that time I was in charge under the assistant salesmanager of our Eastern

branches and functioned for a time as branch manager of our Bronx and Manhattan branches.

Prior to that our Boston branch. The story goes of much deeper than that. That takes us back to about 1945 or 1946.

- Q. All right, sir. That will be sufficient. Mr. Hall quist, what was your position with the company specifically in the year 1953 and what were the duties of your office at that time?
- A. In 1953 I was salesmanager of the Midwest Region and as salesmanager of that area had complete charge of the branches located in that territory, and the wholesalers who sell the products of our company, and naturally I directed the activities of the men who were under me.
 - Q. Now, sir, what is the Midwest Region?
- A. That is the territory comprised of Missouri, Kansas, Iowa, Nebraska, North and South Dakota and Minnesota.
- Q. And what was your position with the company throughout the year 1954 and what were the duties involved?
- (5) A. I was relieved on January 1, 1954, to take over the position of Director of Sales Training. However, as I mentioned earlier I had no opportunity to function in that position because of the state of our business. Our sales had dropped off very sharply in October, 1953, and there were a great number of special assignments that I was sent on or directed to do by our salesmanager and by the president of our company.
- Q. Generally would you tell us the type or the nature of the special assignments on which you were concentrating your efforts?
- A. Well, there was some survey work involved which I directed from our St. Louis office. I made trips up into

Washington and Oregon to look over our sales situation in that area. I made trips into Ohio because of our sales situation in that territory.

I worked very closely in St. Louis with our city sales operation for a considerable part of 1954. That covers about 1954.

- (6) Q. Now, are the duties of the position that you just entined—was that the same position you hold in 1955?
 - A. I still have that same type of roving assignment.
- Q. Are your official duties with Anheuser Busch more or less defined as the direction of the sales of beer products produced by Anheuser-Busch?
 - A. That is correct.
- Q. Now, Mr. Hallquist, what were the gross sales of Anheuser-Busch of its beer products in 1952?
- A. Are you asking in terms of dollars or in terms of barrels!
 - Q. Either figure will be satisfactory.
- A. My memory would have to be refreshed to give you an accurate figure of our total sales in 1952.
- Q. Do you have figures here that you could refresh your memory from, sir?
 - A. I think we have.
- (After consulting papers) Our sales of beer in 1952 in barrels were 6,034,442.
- Q. And what were the gross sales of the company in beer in 1953, sir?
- A. 6,711,222 barrels. Would you like to have the 1954 figures?
 - Q. Yes, sir; what is the figure for 1954?
 - A. 1954, 5,828,760.

Q. Now, sir, on a national basis what was the total—well, (7) what was the ranking in total sales of A: houser Busch in its beer products for 1952?

A. In 1952, if my memory serves me correctly, we were second in total sales in the United States. At that time we had about 7 percent of the total industry sales.

Q. And what was your position in 1953, sir!

A. Our position?

Q. The position of the company in regard to the ranking in total sales in the United States.

A. Anheuser-Busch sold slightly more than its nearest competitor and had a slightly larger share of the total industry than its closest competitor.

However, that is somewhat misleading in that in me major market of the United States is Anheuser Busch first in sales and in most of them is not even second or third.

For example, in the six largest beer-consuming States of the country, namely, New York, Pennsylvania, Michigan, Ohio, Illinois and California, Anheuser-Busch does not even do its national average in those states—except in Illinois where we have about 10 percent of the business. However, in Illinois we are not even No. 1 in that State.

Our total sales are gained as the result of—well, or large sales are gained as the result of our sale of our products in every part of every state of the United States.

Q. Mr. Hallquist, merely so we won't get lost in the explanation. (8) what was the ranking of Anheuset-Busch on a national basis in the sales of its beer in 1958.

A. It was first.

(9) Q. What was the ranking in total sales of Anheuser-Busch of its beer products on a national basis in 1954?

A. It was first also. However, I might explain, there was a very, very considerable drop off in our sales and those of our principal competitors. We lost some 900,000 barrels between 1953 and 1954.

Q. Mr. Hallquist, I am not going to quarrel with the explanation, but the figures that you have already given will indicate that, won't they, your gross sales figures?

A. That is correct.

Hearing Examiner Hier: Just a moment, Mr. Mayer. You brought out that in 1952 Anneuser-Busch had seven percent of the market?

The Witness: Yes, sir.

Hearing Examiner Hier: You have not brought out what they had in 1953 and 1954?

The Witness: To give you the exact figure, Mr. Hier, we had 7.11 in 1952. In 1953 the figure was 7.80. And in 1954 it was an even 7 percent.

Hearing Examiner Hier: Thank you.

By Mr. Mayer:

Q. With relation to 1952, Mr. Hallquist, was the 1953 overall sales of beer in the United States up or down?

A. I would have to consult our records for that. There hasn't been much variation from year to year. As I recall, (10)—the high in the beer industry was about 1947, and we have been on a sort of plateau for the last seven years. I believe—although the record would have to be produced—I believe that 1952 was probably a little bit better year than 1953,

Q. Now, what about the year 1954 as opposed to the year 1953?

A. Total sales for the industry?

Q. Yes, sir.

A. I would have to look at our total figures. I mean, there are so many figures in this business that it is impossible to remember all of them.

Q. Do you have those figures with you here today, sind

A. Yes, sir.

Mr. Barton: I have the package beer sales. I take it that is what you are interested in.

Mr. Mayer: No, sir, gross, all beer sales.

Mr. Barton: We can get them, we can get those sales for you, Mr. Mayer. If you want to go ahead I can get those.

Ba Mr. Mager:

Q. Where is the home office, Mr. Hallquist, of Anheuser. Busch located?

A. 721 Pestalozzi Street, St. Louis.

Q. Does Anheuser-Busch own and operate more than one (11) brewery or brewing facilities?

A. Yes, sir. We have a plant at Newark, New Jersey and at Los Angeles, California.

Q. And I take it with the plant there in St. Louis that those are the only three production facilities owned by Anheuser-Busch in the operation of its beer business!

A. That is correct.

Q. Now, in what state or states does Anheuser-Busch offer its been products for sale?

A. Anheuser-Busch of course offers its products for sale, I would say, at its breweries in Newark, St. Louis, and Los Angeles. We sell f.o.b. our plant to wholesalets. And they of course offer the beer for sale in their various states. If I am not mistaken, we can't be licensed to sell beer in every state.

Q. You mean the brewery company can't be licensed!

A. That is correct.

- Q. In what state or states can the consumer purchase Anheuser-Busch products?
 - A. To the best of my knowledge in all 48.
 - Q. Does that include the District-
 - A. As well as some foreign outlets.
- Q. And would that include the District of Columbia, sir!
 - A. Yes, sir.

Mr. Barton: Mr. Mayer, I now have those total (12) industry figures.

Mr. Mayer: Fine.

The Witness: You asked me for the total barrels for 1952?

By Mr. Maner:

- Q. Yes, sir.
- Å. These are on the basis of tax paid withdrawals, there is no other basis for accumulating these figures. In 1952 the total tax paid withdrawals were 84,836,480 barrels. In 1953 the total withdrawals were 86,045,116 barrels. And in 1954—and these are preliminary figures—83,305,402. I have them from 1947 if you would like to have those,
- Q. No, sir, I don't think that they will add anything. But frankly, why do you use the term "preliminary" figures for 1954?
- A. Well, I don't know whether these are authentic, whether we are sure that the source is correct.
- © Are those the figures used by Anheuser-Busch in compating its markets here for 1954?
 - A. That is correct.
- (13) Q. Now, sir, what is the alcoholic content by volume of the various beers offered for sale by Anheuser-Busch?

- A. We have 3.2 and 4 per cent both.
- Q. I am sorry, sir. I didn't hear that. 3.2 and 4 per cent?
 - A. 3.2 and 4 per cent.
- Q. I notice in reporting that very often 5 per cent is disclosed in the reports to the various agencies.
- A. Well, one figure will indicate by weight and the other by volume. In other words, 4 per cent beer is the same as 5 per cent beer.
- Q. In other words, to the layman there are two types of beer, 3.2 and 5 per cent?
 - A. That is the way it is spoken of, yes, sir.
- Q. And in the reporting of your figures, for instance, in the St. Louis area to the State of Missouri, is it broken down on a 3.2 and 5 per cent basis?
 - A. I think that is correct, sir.
- Q. Now, sir, in the distribution and sale on a nationwide basis of its beer products, with whom does Anheuser-Busch compete nationwide in the sale of its beer products!
 - A. We compete with every brewer in the United States.
- Q. No, sir. The question was on a nationwide basis, your complete national distribution level, with whom does Anheuser-Busch compete?
- (14) A. You mean what other breweries sell in every other State in the United States?
 - Q. Yes, sir.
- A. Well, that would have to be simply a guess on my part insofar as some of the breweries are concerned. I do think that Schlitz is a national distributor of beer. I think that Pabst is: I think that Miller is: I think that Blatz is: I think that we have others, Fallstaff, for example, who claim they are distributed over the Nation from coast to coast. I believe that infers that they sell everywhere. We

have other beers, such as Hamm's, who are very, very widespread in their distribution. Now, whether or not they sell in every one of the 48 States, I don't think we know.

- Q. What method or methods of distribution, Mr. Hall-quist, does Budweiser make use of in efforts to get its beer products to the consumer?
 - A. What do you mean by "methods"?
- Q. For instance, do you distribute through whollyewned branches or through independent distributors or what is the method of distribution?
 - A. We distribute both ways, Mr. Mayer.
 - Q. Both ways?
- A. Yes. In some of the larger metropolitan markets it is almost necessary that we handle the distribution ourselves.
- Q. Other than the national competitors that you mentioned a (15) moment ago, Mr. Hallquist, I take it that Anheuser-Busch is in competition with many local or regional beers wherever it happens to find them in the field in which Anheuser-Busch is attempting to sell its products, is that correct, sir?
 - A. Yes, sir, that is right.
- Q. Now, Budweiser is frequently advertised and referred to as a premium priced beer, sir. Would you tell us what a premium priced beer is?
- A. That's a very, very hard thing to define. I don't think anyone has come up with a definition as to what is a premium.
 - Q. Sir, the question was premium priced beer.
- A. Well, that again is another question that is exceedingly hard to answer. For example, there are different

prices in every area of the United States, both for your so-called local, so-called regional and so-called national brands. Now, in many areas the differential between the brands will vary from say 0 to perhaps \$1.22, so that it is pretty hard to state categorically that we sell at a premiur price. The market price is dependent upon local conditions.

Q. Whatever your terminology is, sir, is Budwelse sold at a differential, let's say, over many of its competitors?

A. In some places, yes; in some places, no.: As I mentioned a minute ago, the so-called differential, there may be none; it may range up to \$1.22.

Hearing Examiner Hier: You are talking about the '(16) wholesale price?

The Witness: Yes, sir. And of course at the retail level very often there is no differential whatsoever. It very important segments of the market it will vary from market to market, and it will also vary within the market. There are many outlets within a market that will sell with no differential, and there are other ones that will sell-with a differential.

Bu Mr. Maner:

Q. What is meant by the advertising of Anheuser.

Busch that it is now available at ordinary prices and still being sold at premium prices elsewhere, sir!

A. In areas where Budweiser may have been at a slightly higher price than the so-called regional or secalled local; it is true that in St. Louis our price was the same as the other beers gold in St. Louis, whereas in the other markets the price had not been changed.

- Q. In other words, it was still selling at a premium price in the other markets?
 - A. If the premium price had existed before,
- (17) Q. Well, Mr. Hallquist, I may be somewhat naive, but it has been my experience and, frankly, my conviction that for years Budweiser has been sold at what I would call prices in excess of the normal or usual local price of local and regional beers.

Now is that correct, sir?

- A. No, I don't think there has ever been a differential that has been static. In other words, the situation changes from time to time from market to market, from outlets within a market, and there are times where you will find Budweiser at the same prices as so-called regional or local beers.
- Q. Now, discarding or eliminating any exceptional times in which the price might have been the same, isn't it true that Budweiser generally and customarily commands a premium price throughout the United States?
 - A. No, sir, that is not true.
 - Q. And why not, sir?
- A. For the factors that I mentioned before, that there is no regularly established differentials in the beer busitiess. They vary from market to market and place to place. Hence, you can't say that we command a premium price at all times in all markets because it simply isn't true. Mr. Mayer.
- Q. I did not ask that sir, at all times and in all markets. I said generally speaking as far as, for instance, the consumer is concerned, Budweiser in the markets throughout the (18) United States, generally speaking, is considered to be a premium priced beer?
 - A. It actually is not, generally.

- Q. In other words, generally Budweiser is sold at local beer prices throughout the United States?
- A. There are times when the price of Budweiser and other beers is the same, in very important markets and important parts of markets.
- Q. And that would be generally true twelve months out of the year in all the major markets in the United States, I take it?
 - A. What would be generally true?
 - Q. It would be generally true.
 - Mr. Barton: What would be generally true?
- Mr. Mayer: That Budweiser was selling at local beer prices.

The Witness: No, it is not, nor is it generally true that it is the reverse. In other words, I can't tell you with any degree of certainty that there is, nor can I generalize on that particular point.

Ba Mr. Mager:

- Q. Now, sir, in the discussion, would you tell us what you mean, for instance, by the use of the term "local beer" or "regional beer"?
- A. There is no well accepted definition for that. I think that in the trade a local beer is considered to be one that (19)—confines their market to a really small area in the immediate town or city that they are in, and a very small area around it. Perhaps you could determine it a metre-politan area. In the case of, well, for example, the St-Louis beers, none of them sell more than 25 per cent of their beer in the City of St. Louis, and St. Louis County-I would consider them regional beers because their distribution is quite widespread. They will go as far assome of them will wind up in California and Texas. They

have good distribution in Tennessee, Arkansas, Oklahoma, Kansas, Iowa, Illinois. In other words, they are truly regional in scope as compared to a small brewer in a Minnesota town that markets their products in that particular town.

- Q. Now, sir, with regard to the local and regional beers and as I understand it, Anheuser-Busch is in competition with many of them throughout the country in these various areas, is it not, sir?
- A. In competition with many of the local and regional breweries, certainly.
 - Q. Yes.
 - A. Certainly.
- Q. Now, sir, approximately how many of the regional or local beers in any particular given area of the United States is Budweiser sold at the same whole ale price?
- A. There is hardly a time when you could make a definite (20) answer to that particular question, Mr. Mayer. The pricing situation in the beer business is not static. It is changing from day to day. There are many changes made without any change at the brewery level or change at the wholesale level. There are changes at the retail level that aren't influenced by one or the other, and it is impossible to give you a general answer on a question of that kind.
- Q. Well, to be more specific, take the St. Louis and St. Louis County area. To your knowledge, prior to 1954 on how many occasions and for how long a time was Budweise or the Anheuser-Busch beer products marketed in this area at the same wholesale price as its competing local or regional beers?

A. Mr. Mayer, just before the war in the St. Louis and St. Louis County area, there was a period when almost all of the outlets sold Budweiser and the other St. Louisbeers at the same price over the bar.

Q. I am sorry, siv. I don't mean to interrupt -w.s based on the wholesale price of Budweiser.

A. The wholesale price? Will you please restate jour question?

Q. Well, to your memory, prior to 1954 on how many occasions and if possible, for what length of time, he Budweiser been sold to since it operates its own branchere—to the retail trade at what would be the wholesa price, at the same price or identical price, generally speaking, of its local and (21) regional beer competitors?

A. Well, Mr. Mayer, we did a considerable amount of research on trying to get an answer to that question that you ask. Our own records will go back on pricing and about 1945—something like that—'46. The information that we have on prices with competitors is very sketchy and I don't think it is authentic until perhaps 1950 or '50 so there is a considerable period that I can't give you mae information about.

In reviewing the book written by Alvin Grievedieck, we do know that beer was legalized, and there was no differential between Fallstaff and Budweiser for a period; when Griesedieck entered the market they sold at a lower profit than—for a short time after that, and Fallstaff continued their so-called premiums or higher price and then finally met the price of Griesedieck.

Now, what happened in the years in between I don't know. I would say that in the years between 1947 or 's' there was a differential between Budweiser and that of the other St. Louis beers. However, it varied in amount and

it wasn't the same, and it varied in amount as to the various kinds of packages we market.

Q. New, sir, not speaking particularly of the St. Louis market, but with reference to the differential which we were just speaking of, in many areas then is there a differential (22) existing between the price of Budweiser on the wholesale level and the price of the various local and regional beers being sold in competition with Budweiser!

A. I think I brought that out before, that at some point there is no differential and the differential will range up to as high as \$1.22, but there is no fixed differential, nor is there any regular differential, and it would vary,

Q. No. sir. I was ned trying to establish a consistent differential, any standard, let's sa, difference in the price. I was merely trying to find out if there was a difference.

A. In certain markets there would be differentials. They may have existed or they may not have existed yesterday. In other words, this thing is in a constant state of flux. It is impossible to generalize on it there, sir, because there is a wide range of changes from time to time.

Hearing Examiner Hier: You say \$1.22 a barrel, a case, or what?

The Witness: That is in the case. In my conversation here I am using it as a measuring stick, 24-12 ounce returnable carton bottles.

Ba Mr. Maner:

- Q. I am sorry. I missed that question and answer.
 Hearing Examiner Hier: \$1.22 refers to the case price.
 Mr. Barton: Twenty-four 12-cunce bottles.
- (23) Hearing Examiner Hier: Twenty-four 12-ounce bottles, returnable bottles.

By Mr. Mayer:

- Q. Now at that point, perhaps, Mr. Hallquist, in tested and distribution of Budweiser and Anheuser Busbeer products, will you tell us what type of containers case lets the beer products are merchandised in?
 - A. Y a mean packaging at the brewery?
 - Q. Yes, sir.
- A. We have 24 12 ounce returnable bottles; we have 24 12-ounce non-returnable bottle that is packed 24 and also a 46-bottle carton. We have a 36 7-ounce carry and a 24 7-ounce carton. We have our cans packaged a 24 12-ounce, in 8 6 package is 48 cans and we also have it packed in 48 12, with 12 cans, four 12 pack cans in package. We also have a 24 16-ounce can. That is also packaged in six 4-can units. We have introduced within the last year a 10-ounce can in a 24 pack, and 8 6 carpack, as well as a fifth bottle containing 25-2 5 ounce. We also package a 12 32-ounce returnable bottle, and a 1-32 ounce non-returnable bottle, and in certain areas whave packed a 24 10-ounce returnable bottle and 24 10-ounce non-returnable bottle. We also package our beer in har barrels.
- (24) Q. Now, sir, with regard to the manner and methods of distributing beer products, the beer products of Anheuser-Busch, I think you mentioned you have several branches or company wholesalers or distributors
 - A. That is right.
 - Q. And would you tell us where those are located!
- A. We have branches located in Boston; the Brank New York; Westbury, New York; at Newark, New Jersey, Baltimore, Maryland; Washington, D. C.; Detroit, Michigan; Cincinnati, Ohio; Chicago, Illinois; St. Paul, Michigan;

nesota; Sioux Falls, South Dakota; Houston, Texas; Denver, Folorado; Los Angeles, California; and San Francisco, California.

- Q. If an area is not covered by those particular branches how are the beer products distributed by Anheuser-Busch?
 - A. Th., agh wholesalers,
- Q. And approximately how many wholesalers are engaged in this distribution?
 - A. We have approximately 700 wholesalers.
- Q. Again, sir, approximately what is the relationship to the total amount of sales of Anheuser-Busch through its respective branches and through its independent wholesalers!
- A. Approximately 25 percent of all our business is through the company's own branches.

Hearing Examiner Hier: Mr. Mayer, the complaint is not clear to me as to whether or not the charge involves both (25) Budweiser and Michelob or merely Budweiser.

Mr. Mayer: It involves only Budweiser, sir,

By Mr. Mayer:

- Q. Now, sir, are you generally familiar with the selling prices of the various beer companies to the wholesalers or at the wholesale level in the St. Louis area for 1953, 1954 and 1955?
 - A. The breweries' prices to the wholesalers?
 - Q. Yes, sir.
 - A. In the St. Louis and St. Louis County market?
 - Q. Yes, sir.
- A. To my knowledge, none of the St. Louis breweries sell to any wholesaler in this market.

- Q. All right, sir, that is fine. Are you familiar with the prices at which breweries acting either as their own distributors or in whatever way we say, sell to the retail outlets in 1953, 1954 and 1955?
 - A. Yes, sir, I am.
- Q. So we will be using the same terminology, Mr. Hallquist, is it your opinion that is a wholesale price the retail outlet?
- A. That is often misunderstood—we generally speak of it as prices to the retailers; so there isn't any miunderstanding we talk in terms of prices to retailers and prices to wholesalers.
- Q. All right, sir, fine, just so we will both understand the (26) terminology.
 - A. Right.
- Q. Now, sir, in the St. Louis area in 1953 and 1954 with whom was and is Anhenser-Busch competing in is efforts to sell its beer products?
 - A. In the St. Louis and St. Louis County market!
 - Q. Yes, sir.
- A. Basically, the other breweries in the City of S. Louis.
 - Q. And would you tell us who they are, sir?
- A. We have Griesedieck Western and Griesedieck Brothers and Falstaff,
- Q. Now, as I understand it, then, from a previous answer, the customers or classes of customers sold be Anheuser-Busch in this area, St. Louis and St. Louis County, they would generally be termed retailers, is that correct, sir!
 - A. That is right
 - Q. And what types of outlets would that include!

- A. That would include both what we term on-premise outlets and off-premise outlets.
- Q. And would you tell us what they are, the onpremise and off-premise outlets?
- A. Well, the on-premise outlet is privileged to sell its merchandise to take out. However, basically the business is for sale by the drink over the counter or at the table; and the off-premise license is only for off-premise consumption and they buy it in the original packages and take it out or (27) off the premises before it may be consumed.
- Q. And what would those type outlets be-liquor stores and so forth?
- A. In the off-premise group, yes, sir, we have fiquor stores, we have super-markets, chain groceries—some drug stores.
- Q. And the on-premise, I take it, would be your tayerns and bars and hotels, and so on?
- A. Taverns, bars, hotels, restaurants, bowling alleys, clubs,
- Q. Now, sir, as of January 1, 1954, with regard to sales volume, what position did the Anhenser-Busch Company hold in the St. Louis market area!

And before you answer, Mr. Hallquist, maybe I should explain to the Examiner that in the use of the term "St. Louis market area" I will intend to include the City of S. Louis and the County of St. Louis, terming it the "St. Louis County area," so we will know what was meant by the use of the term "St. Louis County area,"

The Witness: And what was your question! Hearing Essaviner Hier: Read the question. (The question was read by the reporter.)

Mr. Mayer: Marked as Commission's Exhibit for ideal tifleation No. 12 a list of prices headed "Buffale Branch." (42) Prices to Retailers."

(The document referred to as marked ('one mission's Exhibit Xo. 12 for identification.)

Mr. Mayer: Marked as Commission's Exhibit Xo. 13 for identification a list of prices headed "Baltimore Branch. Prices to Retailers."

(The document referred to was marked Commission's Exhibit Xo. 13 for identification.)

Mr. Mayer: Marked as Commission's Exhibit for identification Xo. 14 a list of prices headed "Washington Bender Prices to Retailers.".

(The document referred to was marked Commission's Exhibit Xo. 14 for identification.)

Mr. Mayer: Marked as Commission's Exhibit for identification Zo. 15 a list of prices headed "Detroit Branch."

(The document referred to was marked (our mission's Exhibit Xo. 15 for identification.)

Mr. Mayer: Marked as Commission's Exhibit for ideal tiffcation Zo. 16, a list of prices headed "Boyton Branch,"

Heaving Examiner Hier: Wait a minute.
Mr. Barton: You have already marked that.
Heaving Examiner Hier: Do you have two Boston branches. Xo. 8 is a Boston branch also.

Mr. Mayer: I ask to have marked as Commission's Exhibit for identification Zo, 7 a price list or a list at (41) prices bended "Cincinnati Branch, Price to Read-

(The document referred to was marked (on mission's Exhibit Xo. 7 for identification.)

Mr. Mayer: Marked for identification as Commission's Exhibit Xo. 8 a list of prices headed "Boston Branch, Price to Retailers."

(The document referred to was marked ('on mission's Exhibit Xo, 8 for identification.)

Mr. Mayer: Marked as Commission's Exhibit for identification No. 9 a list of prices headed "Bronz-Manhatta:"

Westbury: Prices to Retailers."

(The document referred to was marked them in signs, a Kahibit Xo. 9 for identification.)

Ar. Mayor: Marked for identification as Commission's Exhibit Zo. 10 a list of prices headed "Kenray Branch Prices to Retailers."

(The document referred to was marked tommission's Exhibit Xo. 10 for identification.)

Mr. Mayer: Marked for identification as Commission's Exhibit Xo. II a list of prices beaded "St. Joseph Branch Prices to Retailers."

(The document referred to was marked ('ommission's Exhibit Xo. II for identification.)

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/. I think that is correct, sir. on Commission's Exhibit Xo. 2?

(94) somebry of the to offer into evidence (40)

Countilesion & Exhibit for identification Xo. 3.

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received in evidence.) for identification Commission's Exhibit Xo. 3, was The document referred to, heretofore marked

Bearing Examiner Hier: Off the record.

(Droser off the record)

Hearing Examiner Hier: I- that the respondent's price "At headed "St. Louis Branch, Price to Retailers (Net)." county is id to moinsolithebit for identification Xo, 5, a prior Mr. Mayer: Now, sir, I should like to have marked as Hearing Examiner Hier: Back on the receird.

" (10 V) = 10 (B) Exhibit No. 6 a price list headed "Chicago, Price to Re-Mr. Mayer: Yes, sir. And marked as Commission's

Postsing Examiner Hier: As of what date?

the tarious price changes appear on the documents. Mr. Mayer: The dates, sir, appear on the documents.

mission's Exhibits 5 and or identification.) -mo') begarn every of lerrelet sinemused com-

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torid -- noissimmo) not artestinphol ndot

Ar. Barton: Zo objection, Your Honor. Hearing Examiner Hier: Admitted.

(The documents referred to, heretotore marketor identification Commission's Exhibits Nos. 1 and 4, were received in evidence.)

Bu Mr. Mayer:

Q. Now, sir, I show you Commission's Exhibit for the tiffestion Xo. 3, and ask you—I am sorry—Commission's Exhibit for identification Xo. 2, and ask you, sir, what the document is.

A. Well, this is a list in order of rank of the 35 largestelling beers in the United States for 1953.

(39) Q. And what is the document, sir! [1- it is the used by the company, or what is it?

A. That is correct, we use it as a point-of-sale item Q. And I take it that was in the possession of or girel to your salesmen in the course of their duties or their call-

A. In all markets in the country,

C. In all markets; all right, sir.

Mr. Mayer: Mr. Examiner, I should like to offer a evidence Commission's Exhibit for identification No. 2.

Mr. Barton: Zo objection.
Hearing Examiner Hier: Admitted.

(The document referred to, heretofore marketor identification as Commission's Exhibit No. 2, wareceived in evidence.)

By Mr. Mayer:

Q. Now, sir, I show you Commission's Exhibit for identification No. 3, and ask you what that document is

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su flot not bluow I lox nothestiment for tell to Q. Mr. Hallquist, directing your attention to Commis-

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bun dead-respond. To specific out to beil a si tail? A

2. And is that list gorroot as of the date appearing The Harman of Anhenser: Busch.

() Have there been any changes, sir, since that date in is it is obstant any long bedon it is.

the officers or directors of the company;

A. Thure have been, sir.

Abob to smithbur to snotreetions or additions not bluch to

"Count that come ted that of brager dfin shot

; 1-11 thorodal to put Hearing Examiner Her: Just a moment. Have you

the time Examiner Hier: We might just as well put Mr. Barton: Yes, sir, Your Houor, we do have.

The Wittees: He would have to compare them:

Healther Examined Hier: Make II No. 4. A MILLIAM

his Main III. movell all

placent list of officers and directors of Anheuser-buseling As Commission's Exhibit for identification Xo. I, the

messon's Exhibit Xo, 4 for identification.) The document referred to was marked Com-

Stall Hilly massion's Exhibits for identification Xo, I and Xo, 4 mile Mr. Mayor: At this time, sir, I would like to offer Com-

Bearing Examiner Hier: Any objection, Ar. Barton.

Hearing Examiner Hier: All right.

answer you concerning the manpower? You asked for its The Witness: May I ask one question! This I Mid

Mr. Mayer: Xo. sir, I did not. I asked specifically in He, men osle nov bib

.C.C.

TIDSHI

Hearing Examiner Hier: We will take a short recess. The Witness: I see.

Hearing Examiner Hier: The hearing will be in order (Short recess taken.)

Mr. Mayer: At this time, sir, I should like to but

As Commission's Exhibit for identification No. L. several exhibits marked for identification.

Busch, Inc., as well as a list of directors of Anheuser similar to stooillo out to 4591 .44 lingly botts is il bosiver

mission's Exhibit Xo, I for identification.) (The document referred to was marked (en-

softoword guibed Ga Xo. 2, an advertising piece showing the 1953 sales of the Mr. Mayer: As Commission's Exhibit for identification

mission's Exhibit Xo, 2 for identification.) жо родини sew of роттогот дизиноор энТ)

of 100,000 barrels. of brewing companies in the United States selling in exertification Zo. 3, a publication piece showing the 1953 sal-Mr. Mayor: As Commission's Exhibit for ide

mission's Exhibit Xo, 3 for identification.) (The document referred to was marked toll

about once a month. eity, it is obvious that they can't make coverage more than such as we had, and with some 4,500 retail outlets in the three times a week. And with a limited number of salesmen

74, Mr. Hallquist, did the Anheuser-Busch Company make To ount in noitoubor opire et guionnon as al Q (63)

180 of newspaper advertising?

A. Yes, sir.

2 and did it also make use of billboard advertising?

A. Yes, sir, all forms of consumer media, I would say.

C. Did you also make use of what might be termed

A You mean did we put up signs in retail outlets? bar placards and local retail -

J. Yes, sir.

A Yes, sir, we did.

Hearing Examiner Hier: For what, advertising of beer

5 poiriq ni noitonbor guisitro7bs 70

outlet customarily got for the beers brewed in St. Louis. The Witness: "Budweiser now at" whatever price the

in Mr. Mayer:

of the Budweiser produced at one plant as opposed to the Angeles, is there any difference in the grade or the quality various broweries in Newark and at St. Louis and Los Q. Now, sir, with regard to the beer produced by the

budweiser produced at the others?

A. Aone whatsoever,

Hoort Todlers ofat Mr. Mayer: May we have a few moments before we go

Hearing Examiner Hier: Do you want a few minutes'

(99) L66688;

Mr. Mayer: Yes, sir.

Q. It is perfectly all right, sir.

the (33) year or just one figure for the year, or A. I have it month by month here. Do you want it for

sine yletentizordqu to event in thutenes a to tahweines A. Is it a figure that varies so much that there isn't

number?

A. Yes, it is pretty much of a constant. You are ask

O 168, sir. Scel mode 2mi

19 and 18. In other words, we had men leave us and w A. From August until December we average 18, 16, 11.

put others on, and it is never a static number.

Q. And what were their duties, sir, in 1953?

A. Salesmen?

Q. Yes.

ing displays, and to sell new packages to outlets if the outlets where we can to merchandise our product by builda isitotem oles-fo-inioq qu gnittuq yd toltuo odt ni boft tact the retailer, to see that our product is properly identthe on-premises outlet. And the duties are briefly to conin the off-premises outlet, some of them were working on were on the solicitation and merchandising of our product A. Some of them were charged-a part of this erew

Q. And in addition to that, as I understand it, you also don't presently handle that package.

18591 ni nothion of telephone solicitation in 1953;

A. To actually get the orders, yes.

Q. You mean the salesmen did not take orders!

will buy every day, some of them will buy twice a week other words, most of your retail outlets-some of then duently enough to give adequate service to a customer. In (54) A. They wouldn't cover their territories in

A. We have had a hard sales empaign on even before the sales decrease in June. Actually we have constantly been working to get a better share of the St. Louis market. And when I was regional sales manager for this area I made some innovations in our operation of our city sales made some innovations in our operation of our city sales department. For example, our emphasis was on the tarvern outlet for many, many years. And we sort of have overlooded the importance of the growing home market. So a two-unit (32) operation, one part of the group were shared with the responsibility of sales in the or-premises of off-premises in the other group was charged with the responsibility of off-premises sales. And a supervisor headed each one of the groups.

Q. I don't wish to interrupt, but was this prior to June.

A Yes, this was prior to June. And in the latter months of 1953, beganse all of our competitors in the St. Louis County market sold their beer off of routs and St. Louis County market sold their beer off of route wason trucks, in other words, brought the beer right to the outlet and offered it for sale there, while we in the past bad used telephone solicitation, which didn't give us the kind of contact and the availability that the retailer wanded. We made plans and began early in 1954 to change over from this telephone solicitation of orders to a route over from this telephone solicitation of orders to a route about the plans and delivery. And of course as we went along into the year of 1954 we expanded our advertising along the year of 1954 we expanded our advertising the tery greatly.

Q. Mr. Hallquist, how many salesmen did you employ

in the St. Louis City and County area in 1953? A. I have got the exact number. I mean, when you trust to memory you are very apt to make mistakes. And I would like to get that sheet out, if I may.

The Witness: The figure for June 21, 1954 is. Hearing Examiner Hier: Is the competitive figure)

The Witness: Yes, sir. Hearing Examiner Hier: What about the other two

; summo

The Witness: In both instances we were somewhat higher than the prices of other beers.

Hearing Examiner Hier: Tell me this, then, Is the

reading a few days of the prices which your compositions which your competitors were charging for beer on 1-4-54 and 12-31-53.

The Witness: That is correct.

Hearing Examiner Hier: Thank you the last question Mr. Mayer: I am sorry, I didn't get the last question

(31) Heaving Examiner Hier: I asked him if the prices shown in the fast column headed 6-21-54 μ or μ to the his competitors which he has manned here it left. Some solutions on the two previous dates. The

tjus unsmol mus kest

Bu Mr. Maner:

HOMSHR PHE

Q. And I understand it, Mr. Hallquist, in St. Louis County and the St. Louis area Budweiser is its own distributor, it sells to the retailers directly.

A. Directly from the Brewery just the same as the other beers in St. Louis, they all sell directly from the

Brewery to the retailer.
Q. Now, in connection with the price reduction of Jun-

21 of 1954 did the company initiate a sales camp frains connection with this lowering of the price or man want special efforts to announce its price reduction in this area?

borid-noissimmo) vot , At, limitsion - Direct

A. There was another reduction, yes, sir.

Q. And what was that, sir, speaking particularly again

of the 24 quantity case of 12 returnables;

A. The amount of the reduction?

Q. Yes, sir. A. 33 cents.

Q And was this reduction proportionately the same, without being the same amount, of course, but also on the other containers being offered by Anheuser-Busch in this

; 11.0.11!

A. That is correct.

To solister of the tenth of more reduction to the retailer of 0.701 ± 0.001 and 0.001 ± 0.001

the price of draft Budweiser in June of 1954?

L. There was.

Q. Now, sir, when the price reduction was made by Anbenser-Busch in June of 1954 did that result in the sale of the various packages of Badweiser to the retailer, was that price the same as the price used by the local or regional or the other competitors in this area?

A. It was the same price as the price of the other St.

Louis Invaries

(50) Heaving Examiner Hier: Wait a minute, I don't made retained that. If I understand the pleadings correctly better the table set forth in Paragraph 5 of these reductions

there different occasions is admitted to be correct.

1- that correct, Mr. Barton!

Mr. Barton: That is correct, your Honor.

Hearing Examiner Hier: All right. Let's be definite about this. What I want to know, Ar. Hallquist, is this $W_{\rm erro}$ those figures or any of those exactly the figures that were charged by your competitors that you have named between

[samp ason]) to other

: ashing the hg

G. What is the answer?

(28) A. We had roughly about 13 percent of the market here at that time.

By Mr. Mayer:

Q. Now, sir, in the reporting system of Anhenser Basel to the State of Missouri, in reporting the package beer subs. for instance, of Anhenser-Busch in 1953 and 1954, were only subs of Budwelser included in those reports!

Q. There was no other package beer being sold by Anhenser Busch in the St. Louis market in 1953 and 1954.

.o.Z. .I.

Q. Now, six, was there a price reduction in the whole sale price of Buckers made by the Anheuser-Busch Company during January of 1953.

A. You are talking now that there was a reduction it

sadimor off of colud

G. Les, -11:

1. Yes, sir: there was.

Q. And speaking particularly of the 24 quantity one of 12 returnables, approximately what did that price is duction amount 10?

Std .. 62 A.

Of H as there a similar not in exact amount but a comparable price reduction made on the other containers. Buckness to the area to the area of the area.

.titgir si tudT A (92)

Q Now, sir, was there a price reduction made by Anhouser Busch on its sale of Budweiser to the retailers during the month of June in 1954;

(43) Mr. Mayer: May we go off the record? Hearing Examiner Hier: Yes. Off the record. (Discussion off the record.)

Hearing Examiner Hier: On the record.

Mr. Mayer: Mr. Examiner, may we go back? I was mistaken in the identification of Commission's Exhibit for identification No. 8. That should have been identified as "a list of prices of the Houston Branch.

Hearing Examiner Hier: No. 16 is the Boston Branch? Mr. Mayer: No. 16 is the list of prices headed "Boston Branch. Prices to Retailers."

(The document referred to was marked Commission's Exhibit No. 16 for identification.)

Hearing Examiner Hier: Have you marked all those exhibits yourself?

Mr. Mayer: No, sir, I have not.

Hearing Examiner Hier: When you get through we will take time out so the reporter gets a chance to mark them so they won't get mixed up.

Mr. Mayer: All right, sir.

Marked as Commission's Exhibit for identification 17 a list of prices headed "Kansas City Branch. Prices to Retailers."

(The document referred to was marked Commission's Exhibit No. 17 for identification.)

(44) Mr. Mayer: Marked as Commission's Exhibit for identification No. 18 a list of prices headed "St. Paul Branch, Prices to Retailers,"

(The document referred to was marked Commission's Exhibit No. 18 for identification.)

Mr. Mayer: Marked as Commission's Exhibit for identification No. 19 a list of prices headed "Sioux Falls Branch. Prices to Retailers."

(The document referred to was marked Commission's Exhibit No. 19 for identification.)

Mr. Mayer: Marked as Commission's Exhibit for identification No. 20 a list of prices headed "Denver Branch, Prices to Retailers."

(The document referred to was marked Commission's Exhibit No. 20 for identification.)

Mr. Mayer: Marked as Commission's Exhibit for identification 21 a list of prices headed "San Francisco Branch, Prices to Retailers."

(The document referred to was marked Commission's Exhibit No. 21 for identification.)

Mr. Mayer: And marked as Commission's Exhibit for identification 22 a list of prices headed "Los Angeles Branch, Prices to Retailers."

(The document referred to was marked Commission's Exhibit No. 22 for identification.)

(45) Hearing Examiner Hier: Are these dates coincident on all of these exhibits!

Mr. Mayer: On some, but not all, sir. The dates are fairly self-explanatory, but I will ask Mr. Hallquist one or two explanatory questions about them.

By Mr. Mayer:

Q. Now, sir, directing your attention, Mr. Hallquist, to the documents that have been marked as Commission's

Exhibits for identification 5 through 22, would you full as what they are, sir!

- A. They are our prices from the branch location to the retail outlets in that community or market.
- Q. That would be the prices by the wholly owned from of Budweiser doing its own distributing to the retail out lets in that particular marketing area?
 - A. That is correct.
- Q. Now, sir, as a matter of explanation, several of the exhibits read "Pre-October" and "Post-October," Would you tell us to what year that refers?
 - A. That refers to 1953.
 - Q. 1953.

Mr. Mayer: At this time, Mr. Examiner, I should like to offer Commission's Exhibits for identification 5 through 22, inclusive, into evidence.

Mr. Barton: No objection.

(46) Hearing Examiner Hier: Admitted.

(The documents referred to, heretofore marked for identification Commission's Exhibits 5 through 22, were received in evidence.)

Mr. Mayer: Now, sir, I should like to have marked as Commission's Exhibit for identification No. 23 a list of prices headed "Budweiser and Michelob Prices."

Hearing Examiner Hier: Dated?

Mr. Mayer: The dates appear thereon with regard to the price changes. This does bear a date at the bottom and the name of J. E. Ritter, dated October 26, 1954.

(47) By Mr. Mayer:

Q. Mr. Hallquist, I show you what has been marked Commission's Exhibit for identification 23 and ask you what that document is,

A. This is a list of Budweiser and Michelob prices, f.o.b, our plant to wholesale locations in various parts of the country. And if I may, these figures are the latest figures, I believe. (After examining document) Yes, that is right.

Mr. Mayer: May we go off the record a moment?

Hearing Examiner Hier: Yes.

(Discussion off the record.)

Hearing Examiner Hier: On the record.

By Mr. Mayer:

- Q. As I understand Commission's Exhibit for identification No. 23, Mr. Hallquist, this is the prices of Anheuser-Busch to its wholesalers, the wholesale prices rather than the prices to its various branches?
 - A. That is right.
- Q. That is used by the company in distributing its

Mr. Ingamells: F.o.b.

Mr. Mayer: Well, it says so on the exhibit. I would like to offer, Mr. Examiner, Commission's Exhibit for identification 23 into evidence,

Mr. Barton: No objection, your Honor, subject to correction as to currency of the prices on it; and also I would like to have permission to withdraw it to have a photostat (48) made of it, inasmuch as we do not seem to have a copy of it at the present time.

Hearing Examiner Hier: Admitted. You have to get the photostated copies.

(The document referred to, heretofore marked Commission Exhibit 23 for identification, was received in evidence.)

Hearing Examiner Hier: I take it, Mr. Mayer, you are offering these exhibits to show rankings of various brewgeries in the United States, for that purpose. Now, are any of these breweries under control—I mean, under joint operation? For instance, I see here Griesedieck Western and Griesedieck Brothers. Are these combined?

Mr. Mayer: No, sir. I think we will point out as we go along those are two separate and individual companies.

Hearing Examiner Hier: Well, on this Commission Exhibit 3, for instance, City Products Company is totally unknown to me. Is that in-where is that?

The Witness: They are in New Orleans and in Cleveland, Ohio.

Hearing Examiner Hier: How about Jacksonville?

The Witness: I am not too sure there—there has been a change of ownership of one brewery in Florida a short time ago.

Mr. Mayer: I would like at this time to have marked as Commission's Exhibit for identification 24 a memorandum dated June 18, 1954, to J. E. Barsi from J. Hallquist, Jr.

(49) (The document referred to was marked Commission Exhibit 24 for identification.)

Mr. Mayer: I would like to have marked for identification as Commission's Exhibit 25-A, -B, -C, -D and -E —well, may we go back? I would like to mark this exhibit differently.

Mark as Commission's Exhibit for identification No. 25 a memorandum dated Friday, June 17th—and may we go off the record a moment?

Hearing Examiner Hier: Yes. (Discussion off the record.)

Hearing Examiner Hier: On the record. From whom to whom?

Mr. Mayer: There is no indication, sir, on the memorandum as to where or from whence it came.

(The document referred to was marked Commission Exhibit 25 for identification.)

Mr. Mayer: I would like to say the same is true of the next exhibit to be marked for identification.

Mark as Commission's Exhibit for identification 26 a memorandum generally disclosing salesmens' calls dated—

Hearing Examiner Hier: Wait a minute. Two pages? Mr. Mayer: Yes, sir.

Hearing Examiner Hier: That will be -A and -B.

Mr. Mayer: Dated—again, we have a mix up in (50) dates. It is actually dated Saturday, June 18, 1954.

Hearing Examiner Hier: Is it signed? Mr. Mayer: No, sir, it is unsigned.

(The document referred to was marked Commission Exhibit 26-A and 26-B for identification.)

Mr. Mayer: I would like to have marked as Commission's exhibit for identification 27-A and -B a two-page memorandum dated June 21, 1954 to Mr. J. E. Barsi from Mr. J. Hallquist, Jr.

(The document referred to was marked Commission Exhibit 27-A and -B for identification.)

Mr. Mayer: I would like to have marked for identification as Commission's Exhibit 28-A and -B an undated, unsigned two-page memorandum of notes.

Hearing Examiner Hier: And the subject?

Mr. Mayer: It has no subject, sir. The contents will be related to the other memorandums.

Hearing Examiner Hier: All right.

(The document referred to was marked the mission Exhibit 28 V and 28 B for identification)

Mr. Mayer: Now, siz, mark as Commission's exhibitor identification 29 A and B a two page memorandom dated June 22, 1954 to Mr. J. E. Barsi from Mr. J. Hay quist, Jr.

(The document referred to was marked Commission Exhibit 29-A and 29-B for identifications)

(51) Mr. Mayer: Mark as Commission's exhibit for identification 30-A, -B and C, three pages dated Tuesday. June 22, 1954, generally descriptive of salesmen's calls.

(The document referred to was marked Commission Exhibit 30-A, _zB and -C for identification.)

Mr. Mayer: Mark as Commission's exhibit for identification 31 A and -B a fwo-page memorandum dated June 25, 1954 to Mr. J. E. Barsi from Mr. J. Hallquist, Jr.

(The docum at referred to was marked Commission Exhibit 31-A and 31-B for identification.)

Mr. Mayer: Mark as Commission's exhibit for identification 32 a telegram dated June 25, 1954 from Mr. J. Hallquist, Jr., to Mr. J. E. Barsi.

(The document referred to was marked Commission Exhibit 32 for identification.)

Mr. Mayer: Mark as Commission's exhibit for identification No. 33 a memorandum dated June 25, 1954 to Mr. J. E. Barsi from J. Hallquist, Jr.

(The document referred to was marked Commission Exhibit 33 for identification.)

John Hallquist. Jr., tor Commercian Direct

Mr. Mayer: Now. Mr. Hallquist, I should like to show you Commission exhibits for identification Nos. 24 through 33-

B. Mr. Mayer:

- Q. First of all, I didn't get the "Junior" on your name, but (52) I take it you are the "J. Hallquist" referred to on these documents, are you not!
 - A. That is correct, sir.
- Q. Now, sir, directing your attention to Commission exhibits for identification 24 through 33, would you tell us what those exhibits are, please, sir?
- A. You want me to match them—because we have two things here, apparently—
 - Q. Yes, sir, please just what they are,
- $\Lambda.$ Well, the Exhibit 24 is a letter to Mr. Barsi written by me.

Exhibit 25 is a memorandum detailing the results of salesmen's calls.

- 26-A is a memorandum detailing results of salesmen's calls.
 - 27-A is a letter to Mr. Barsi by myself.
 - Q. That would be 27-A and B, sir?
 - A. 27-A and -B.
 - 28 A and B are some handwritten notations.
 - Q. Now, by whom were those made?
 - A. By me.
 - Q. By you?
 - A. Yes, sir.
- 29-A is a memorandum to Mr. Barsi written by myself—that is 29-A and -B.

Exhibit 30-A, -B and -C are reports of salesmen.

(53) Exhibit 31-A and -B is a memorandum written by myself to Mr. Barsi.

Item 32 is a telegram sent by me to Mr. Barsi. Item 33 is a memorandum to Mr. Barsi from myself. Hearing Examiner Hier: Who is Mr. Barsi?

The Witness: Mr. Barsi was vice president and sales manager of Anheuser-Busch.

By Mr. Mayer:

Q. And at that time, Mr. Hallquist, were his duties confined to the beer products of Anheuser-Busch?

A. Well, I believe he had some jurisdiction over the cabinet division but his main job was with the brewery sales division.

Mr. Mayer: Mr. Examiner, in the description of the documents by Mr. Hallquist, I noted that we failed to mark this exhibit as Commission's Exhibit 24-A, -B and -C. It is a fact that it is a three-page document and should have been so marked.

Hearing Examiner Hier: You will correct the record, Mr. Reporter.

(The document referred to, heretofore marked Commission Exhibit 24 for identification, was remarked Commission Exhibit 24-A, -B and -C for identification.)

Mr. Mayer: I should like then at this time to offer into evidence Commission exhibits for identification 24 through 33.

(54) Mr. Barton: No objection, your Honot. Hearing Examiner Hier: Admitted.

(The documents referred to, heretofore marked Commission Exhibits 24-A, -B, -C; 25; 26-A, -B; 27-A, -B; 28-A, -B; 29-A, -B; 30-A, -B, -C; 31-A, -B; 32; and 33, were received in evidence.)

Mr. Mayer: Now, sir, I should like to have marked as Commission's exhibit for identification No. 34, an advertising piece dated Friday, June 25, 1954, taken from the St. Louis Post-Dispatch.

Hearing Examiner Hier: By the respondent! Mr. Mayer: Yes, sir,

(The document referred to was marked Commission Exhibit 34 for identification.)

Mr. Mayer: I should like to have marked Commission's Exhibit for identification 35 an advertising piece of respondents marked "P54-5."

(The document referred to was marked Commission Exhibit 35 for identification.)

Mr. Mayer: I should like to have marked Commission's Exhibit for identification 36 an advertising piece of the respondent which is undated.

Hearing Examiner Hier: Does it have a tear-sheet number?

Mr. Mayer: No, sir, it does not.

(55) (The document referred to was marked Commission Exhibit 36 for identification.)

Mr. Mayer: I should like to have marked as Commission's Exhibit for identification 37 an advertising piece of respondent bearing the marking "P54-8."

(The document referred to was marked Commission Exhibit 37 for identification.)

Mr. Mayer: I should like to have marked as Commission's Exhibit for identification No. 38 an advertising piece of respondents bearing the marking "P54-6."

(The document referred to was marked to mission Exhibit 38 for identification.)

(56) Mr. Mayer: I would like to have marked as to mission's Exhibit for identification No. 39 an advertising piece of respondent marked P 54.7.

(The document referred to was marked too mission's Exhibit 39 for identification.)

Hearing Examiner Hier: Do you have 34 through 39 all marked now?

Mr. Mayer: Yes, sir.

Mr. Barton: No objection, your Honor.

Hearing Examiner Hier; 34 through 39 are admitted in evidence.

(The documents referred to, heretofore marked Commission's Exhibits 34 through 39 for identification, were received in evidence.)

By Mr. Mayer:

- Q. Mr. Hallquist, referring to Commission's Exhibit 35, would you tell us to what use that advertising piece was put by Anheuser-Busch.
- A. Frankly, I don't know whether this is a newspaper ad or whether it is a piece of point-of-sales material.
- Q. Was it a piece of material used by Anhenser Basel during 1954?
 - A. Yes, sir; it was,
- Q. Now, sir, directing your attention to Commission's Exhibit 36, would you tell us what that is and where it (57) appeared.
 - It appears to have been a newspaper advertisement.

Mr. Mayer: Do you have records by which he might refresh his memory about the date of it?

Mr. Barton: We can get that. I don't have them at the present moment, but that can be determined.

Hearing Examiner Hier: Off the record.

(Discussion off the record.)

Hearing Examiner Hier: On the record.

Mr. Mayer: And is it understood, Mr. Examiner, that Mr. Barton will mark on the exhibits physically in ink where the particular advertising material appeared?

Mr. Barton: And the date.

Hearing Examiner Hier: And the date of the advertisement. That will apply to 35, 36, 37, 38 and 39,

Mr. Mayer: I should like to have marked as Commission's Exhibit for identification 40 an advertising piece of the respondent. It bears no further identifying label.

(The document referred to was marked Commission's Exhibit 40 for identification.)

Mr. Mayer: I should like to have marked as Commission's Exhibit for identification 41 page 14-B of the Observer dated Wednesday, June 23, 1944.

(The document referred to was marked Commission's (58) Exhibit 41 for identification.)

Mr. Mayer: I should like to have marked as Commission's Exhibit for identification 42 a page of the Observer, page II-B, dated Wednesday, June 23, 1954.

(The document referred to was marked Commission's Exhibit 42 for identification.)

Mr. Mayer: At this time, Mr. Examiner, I should like to offer in evidence Commission's Exhibits for identification No. 40, 41 and 42.

Hearing Examiner Hier: Mr. Barton.

Mr. Barton: No objection.

Hearing Examiner Hier: Admitted.

(The documents referred to, heretofore marked Commission's Exhibits 40, 41 and 42 for identification, were received in evidence.)

By Mr. Mayer:

- Q. Now, Mr. Hallquist, directing your attention to Commission's Exhibit No. 40, would you tell us to what use that particular piece of material would be put by Anheuser Busch.
 - A. This is a piece of point-of-sale material.
- Q. Would that be the type of placard that we might find exhibited in the bar of a local tayern or any retail outlet on or off the premises?
 - A. Yes, sir.
- (59) Q. And was this used during 1954 by Anheuser-Busch?
 - A. Yes, sir.

Mr. Mayer: Now I should like to have marked as Commission's Exhibit for identification 43 a memorandum dated July 13, 1954 from Mr. F. P. Rollins, Jr. to Mr. A. von Gontard.

(The document referred to was marked Commission's Exhibit 43 for identification.)

Mr. Mayer: I should like to have marked as Commission's Exhibit for identification 44 a memorandum from Mr. A. von Gontard to Mr. Frank Rollins, dated July 7, 1954.

(The document referred to was marked Commission's Exhibit 44 for identification.)

Hearing Examiner Hier: Mr. Barton.

Mr. Barton: No objection.

Mr. Mayer: I should like to offer Commission's Exhibit 43 and 44 into evidence.

Mr. Barton: No objection.

Hearing Examiner Hier: Admitted.

(The documents referred to, heretofore marked Commission's Exhibits 43 and 44 for identification, were received in evidence.)

Mr. Mayer: Now, sir, I should like to have marked as Commission's Exhibit for identification 45 a (60) tabulation of figures dated March 1, 1954 headed "Draft and Bottle Beer Sales—St. Louis and St. Louis County", comparing the months of January, 1953 and January, 1952—I am sorry, the date is a little indistinct on the exhibit, it should be dated March 17, 1953.

Hearing Examiner Hier: Draft and bottle beer sales by whom?

Mr. Mayer: This is a comparison of the entire market for St. Louis and St. Louis County.

Hearing Examiner Hier: Is that a one-page document? Mr. Mayer: Yes, sir. They are all single, one-page documents.

(The document referred to was marked Commission's Exhibit 45 for identification.)

Mr. Mayer: I should like to have marked as Commission's Exhibit for identification 46 a document dated April 14, 1954 headed "Draft and Bottle Beer Sales—St. Louis and St. Louis County", comparing the months of February, 1953 and 1952.

(The document referred to was marked Commission's Exhibit 46 for identification.)

Mr. Mayer: I should like to have marked as Commission's Exhibit for identification No. 47 a document headed "Draft and Bottle Beer Sales—St. Louis and St. Louis (61)—County", dated May 28, 1953, comparing the months of March, 1953 and March, 1952.

(The document referred to was marked Commission's Exhibit 47 for identification.)

Mr. Mayer: I should like to have marked as Commission's Exhibit for identification No. 48 a document headed "Draft and Bottle Beer Sales—St. Louis and St. Louis County," dated June 10, 1953, comparing the months of April, 1953 and April, 1952.

(The document referred to was marked temmission's Exhibit 48 for identification.)

Mr. Mayer: I should like to have marked as Commission's Exhibit for identification No. 49 a document headed "Draft and Bottle Beer Sales—St. Louis and St. Louis County", dated July 14, 1953, comparing the months of May, 1953 and 1952.

(The document referred to was marked Commission's Exhibit 49 for identification.)

Mr. Mayer: I would like to have marked as Commission's Exhibit for identification No. 50 a document headed "Draft and Bottle Beer Sales—St. Louis and St. Louis County", dated August 20, 1953, comparing the months of June, 1953 and June, 1952,

(The document referred to was marked Commission's Exhibit 50 for identification.)

(62) Mr. Mayer: I should like to have marked as Commission's Exhibit for identification No. 51 a document headed "Draft and Bottle Beer Sales—St. Louis and St. Louis County", dated September 23, 1953, comparing the months of July, 1953 and 1952.

(The document referred to was marked Commission's Exhibit 51 for identification.)

Mr. Mayer: I should like to have marked as Commission's Exhibit for identification No. 52 a document headed "Draft and Bottle Beer Sales - St. Lonis and St. Louis County", dated October 20, 1953, comparing the months of August, 1953 and 1952.

(The document referred to was marked Com mission's Exhibit 52 for identification.)

Mr. Mayer: I should like to have marked as Commission's Exhibit for identification No. 53 a document headed "Draft and Bottle Beer Sales - St. Louis and St. Louis County", dated November 12, 1953, comparing the month of September, 1953 and 1952.

(The document referred to was marked Commission's Exhibit 53 for identification.)

Mr. Mayer: I should like to have marked as Commission's Exhibit for identification No. 54 a document headed "Draft and Bottle Beer Sales—St. Louis and St. Louis County", dated December 10, 1953, comparing the months (63)—of October, 1953 and 1952.

(The document referred to was marked Commission's Exhibit 54 for identification.)

Mr. Mayer: I should like to have marked as Commission's Exhibit for identification No. 55 a document headed

"Draft and Bottle Beer Sales—St. Louis and St. Louis County", dated June 29, 1954, comparing the months of November, 1953 and 1952.

(The document referred to was marked Commission's Exhibit 55 for identification.)

Mr. Mayer: I should like to have marked as Commission's Exhibit for identification No. 56 a document headed "Draft and Bottle Beer Sales—St. Louis and St. Louis County", dated February 15, 1954, comparing the months of December, 1953 and 1952.

(The document referred to was marked Commission's Exhibit 56 for identification.)

Mr. Mayer: I should like to have marked as Commission's Exhibit for identification 57 a document headed "Draft and Bottle Beer Sales—St. Louis and St. Louis County", dated March 10, 1954, comparing the months of January, 1954 and 1953.

(The document referred to was marked Commission's Exhibit 57 for identification.)

(64) Mr. Mayer: Mark as Commission's Exhibit for identification 58 the document headed "Draft and Bottle Beer Sales, St. Louis and St. Louis County," dated April 1, 1954, comparing the months of February 1954 and 1953.

(The document referred to was marked Commission's Exhibit No. 58 for identification.)

Mr. Mayer: Mark as Commission's Exhibit for identification 59 a document headed "Draft and Bottle Beer Sales, St. Louis and St. Louis County," dated May 10, 1954, comparing the months of March 1954 and 1953.

(The document referred to was marked Commission's Exhibit No. 59 for identification.)

Mr. Mayer: Mark as Commission's Exhibit for identification No. 60 a document headed "Draft and Bottle Beer Sales, St. Louis and St. Louis County," dated June 11, 1954, comparing the month of April 1954 with the month of April 1953.

(The document referred to was marked Commission's Exhibit No. 60 for identification.)

Mr. Mayer: Mark this Commission's Exhibit for identification 61, a document headed "Draft and Bottle Beer Sales, St. Louis and St. Louis County," dated July 13, 1954, comparing the months of May 1954 and 1953.

(The document referred to was marked Commission's Exhibit No. 61 for identification.)

Mr. Mayer: Mark as Commission's Exhibit for identification (65) No. 62 a document headed "Draft and Bottle Beer Sales, St. Louis and St. Louis County," dated August 13, 1954, comparing the months of June 1954 and 1953.

(The document referred to was marked Commission's Exhibit No. 62 for identification.)

Mr. Mayer: Mark as Commission's Exhibit for identification 63 a document headed "Draft and Bottle Beer Sales, St. Louis and St. Louis County," dated September 20, 1954, comparing the months of July 1954 and 1953.

(The document referred to was marked Commission's Exhibit No. 63 for identification.)

Mr. Mayer: Mark as Commission's Exhibit for identification 64 a document headed "Draft and Bottle Beer Sales,

St. Louis and St. Louis County," dated October 11, 1954, comparing the months of August 1954 and 1953.

(The document referred to was marked Commission's Exhibit No. 64 for identification.)

Hearing Examiner Hier: Whose figures are these. Counsel?

Mr. Mayer: They were submitted by Anheuser-Busch. May we have just a moment to show these to counsel! Hearing Examiner Hier: Yes. Off the record.

(Discussion off the record.)

Mr. Barton: Your Honor, I might state on the record the problem we have with respect to these.

(66) Hearing Examiner Hier: Do you want this on the record?

Mr. Barton: Yes, I think so. .

First of all, these records are kept by the City Sales Department. I do not know the source of the figures that are on here (indicating exhibits). We have collected from official sources the accurate figures for each of these months and other months. Subject to correction from those official figures, of course, these figures are all right to go in.

The second point; however, is more fundamental. This exhibit, shows the draft sales as well as the package sales. Hearing Examiner Hier: Combined?

Mr. Barton: Well, they are in separate columns and then combined. Now, so far as the complaint is concerned. I think it involves package sales in the package markets. My suggestion would be that I could object to it for the figures on the draft, certainly; on the package sales, sub-

ject to the correction with the official figures which we will supply.

Hearing Examiner Hier: The draft beer prices are not involved in this complaint, are they!

Mr. Mayer: I think, sir, that the draft prices are pertinent to this proceeding, and if directed toward the package sales of Budweiser that is true. I would, however, ask that an order be issued which would apply to both sales of (67). Anheuser-Busch in whatever market it might be found, and in that instance I think it would be pertinent to be received to show the draft beer figures because as of June 21, 1954 the draft price of Budweiser was reduced in this area.

Hearing Examiner Hier: You are charging price diserimination against this respondent on both draft and packaged beers?

Mr. Mayer: Yes, sir.

Mr. Barton: If Your Honor please, the complaint does not quite read that way. It seems to involve the packaged market. It is true that it is dealing with total industry; the complaint talks of total beer, but when it gets down to the allegations with regard to price reduction, it is limited to the packaged beer market, and if you will note in paragraph 5, the reference is to packaged beer exclusively.

Hearing Examiner Hier: Yes, that is true.

Mr. Barton: And for that reason I think that figures with respect to draft beer do not throw any light on the problem we have here in this respect.

Hearing Examiner Hier: Of course, if he is not charging discrimination with reference to draft beer, it does not make any difference whether they go in er not; they cannot be used. But if he is charging discrimination with refer-

ence to draft beer, that is a horse of another color, and i understand you are?

(68) Mr. Mayer: Yes, sir.

Hearing Examiner Hier: Well, this complaint is sufficiently broad, I suppose, to include draft beer, although as you say, Mr. Barton, paragraph 5 gives me the impression at any rate that it is confined to packaged beer.

Now, what do you want to do? Do you want to amend the complaint, or do you think it is necessary, or just what do you want to do?

Mr. Mayer: I do not believe it is necessary to amend it, if the Examiner please.

Hearing Examiner Hier: All right. You take the position that the complaint is broad enough to cover both, and I cannot say that it is not. It doesn't give me that impression—

Mr. Barton: It did not give me that impression.

Hearing Examiner Hier: It doesn't give me that impression now, but I can see where under the liberal rules of practice of an administrative agency where it could be included.

Very well, then. The record may show, Mrs. Wick, first, that counsel for the Government insists that this complaint attacks discrimination in the price of both draft and packaged beer.

Secondly, that Mr. Barton objects to that construction, and third, that I agree with Mr. Mayer that the (69) complaint is sufficiently broad under our rules of practice to sustain that construction.

Therefore, any objection to Commission's Exhibits 45 through 64 on draft beer necessarily must be overruled.

Did you offer these in evidence?

Mr. Mayer: I am going to offer them right now.

I offer Commission's Exhibits for identification 45 through 64 into evidence.

Hearing Examiner Hier: Outside of that objection, Mr.

Barton, is there any other?

Mr. Barton: Well, only subject to correction, Your Henor. I just am not certain of the source of the material, and as I say we do have a tabulation based on the official sources which we will submit.

Hearing Examiner Hier: We want to get the correct figures in.

Mr. Mayer: Certainly. , I perfectly agree with that.

Hearing Examiner Hier: All right. With that under standing that they are subject to correction if errors or inaccuracies be found, Commission's Exhibits 45 through 64 are admitted into evidence.

(The documents referred to, heretofore mark d for identification Commission's Exhibits Nos. 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63 and 64, were received in evidence.)

(70) Mr. Mayer: May we go off the record a moment, sin!

Hearing Examiner Hier: Yes. Off the record.

(Discussion off the record.)

Hearing Examiner Hier: On the record.

All right. We will reconvene at 1:45.

Incidentally, if you have any witaesses coming to morrow morning at 10 o'clock, tell them to come at 9. We are starting at 9.

Mr. Mayer: Are we on the record or off the record? Hearing Examiner Hier: We are on the record.

Mr. Ingamells: Off the record.

Hearing Examiner Hier: Off the record.

(Discussion off the record.)

Hearing Examiner Hier: All right. We will recess now until 1:45 this afternoon.

(Whereupon, at 12:15 o'clock p. m., a recess was taken until 1:45 o'clock p. m., this same day.)

(71) AFTERNOON SESSION

1:45 p. n.

Hearing Examiner Hier: The hearing will be in order.

JOHN HALLQUIST, JR., resumed the witness stand and testified further as follows:

Direct Ecomination - Besumed

Mr. Mayer: Mr. Examiner, at this time I should like to have marked as Commission's Exhibit for identification 65-A, -B and -C a tabulation headed "Beer Sales in 81. Louis and 81. Louis County in Barrels," and this was submitted by the respondent.

Hearing Examiner Hier: Is it the respondent's beer sales?

Mr. Mayer: It covers the market areas.

(The document referred to was marked Commission's Exhibit 65-A, -B and -C, for identification.)

Mr. Mayer: I should like also to have marked as Commission's Exhibit for identification 66-A a graphical representation of the package beer sales in the City of St. Louis

and St. Louis County for the years 1950 and 1954, and marked for identification as 66-B a graphical picture of the total beer sales in the City of St. Louis and St. Louis County for the years 1950 and 1954.

(72) Hearing Examiner Hier: You say '50 and '54?

Mr. Mayer: '50 through '54.

(The document referred to was marked Commission's Exhibit 66-A and -B for identification.)

Mr. Barton: No objection.

Mr. Mayer: I would like to offer at this time, Mr. Examiner, Commission's Exhibits for identification 65 A. B and C, and 66-A and B, for the record.

Hearing Examiner Hier: Any objection?

Mr. Barton: No objection.

Hearing Examiner Hier: Admitted.

(The documents referred to, heretofore marked for identification Commission's Exhibits 65 A, B and -C and 66-A and -B, were received in evidence.)

Ba Mr. Mayer:

Q. Now, Mr. Hallquist, eliminating for the purpose of this question the nationally advertised beers of Schlitz, Miller's, Pabst and Blatz, and also confining ourselves to the trade areas in which Budweiser distributes, or Anheuser-Busch distributes its beer products through a branch of the company, in which one or more of those particular trade areas was Budweiser sold at the same prices as the regional and local beers in those areas?

A. There are quite a few of those areas, Mr. Mayer, and . I couldn't recite them offhand. Furthermore, I think we

would (73) have to know just when or what particular date.

Q. During the year 1954, sir.

A. You are talking about it at the retail level or the consumer level?

Q. Yes, sir, the sale to the retailer.

A. In fairly large areas of Texas, for example, regional beers will sell at the same price as Budweiser.

Q. If you will excuse me, those are the prices to the retailers as opposed to the Budweiser brand price to retailers.

A. I thought you were excluding branches.

Q. No, sir, I am talking only of branches.

A. Only of the branches?

Q. Yes, sir.

A. One place in point would be Sioux Falls, South Dakota.

Q. And what beer would that be, sir?

A. That would be Hamm's.

Chicago, Illinois, where Hamm's is also sold at practically the same price as Budweiser. Offhand I can't remember any other point without referring to whatever document we have.

Mr. Mayer: That is all, Mr. Hallquist.

(74) Hearing Examiner Hier: Before you go into cross-examination, I am not quite satisfied with that last question or answer. What I am interested in knowing. Mr. Hallquist, is this: Is this pattern of production in St. Louis and St. Louis County repeated in 1954 or super seded in 1954 in any other area of the United States with reference to local and regional beer sold?

The Witness: Not to the same extent as it was in St. Louis. I might—

Mr. Barton: If your Honor please, I think we will put in the facts on that, the particulars, during the course of the cross-examination.

Hearing Examiner Hier: All right.

Cross-examination by Mr. Barton:

Q. Mr. Hallquist, in the course of the examination there has been reference to so-called "premium" beers and "premium priced" beers. Now, could you tell us, are there any standards by which a beer can be classified as a premium beer?

A. No, there are no standards or regulations by which a beer can be judged a premium or a premium-priced beer.

As a matter of fact, the other breweries in St. Louis all use the term "premium" in connection with their products, as do a number of other beers that are sold in the St. Louis market and which are brought in from outside of St. Louis.

(75) For example, Tayern Ale labels itself as a premium beer. Tudor is a "premium" beer, 905—all of them, including the St. Louis beers use that terminology and it is widely used throughout the United States by a large number of brewers.

For example, in the East, Gunther terms their beer a premium beer. Even as far away as El Paso, Texas, a small brewer there sells his beer as premium beer.

Mr. Barton: Mark this for identification, please, as Respondent's Exhibit 1. That is samples of advertising of Falstaff Beer in the period August 1950 through November 1954.

(The document referred to was marked Respondent's Exhibit 1 for identification.)

By Mr. Barton:

Q. Now, I show you some samples of the advertising of Falstaff and ask you whether they have used the term "premium" in their advertising.

A. Yes, sir. Their usual terminology is "premate quality Falstaff." I am very familiar with it.

Mr. Barton: I offer the Exhibit 1 in evidence.

Mr. Mayer: Well, Mr. Examiner, I do not see an particular relevance in this effort to establish the fact that certain beers are advertised as premium quality beers. I am willing to stipulate to that and avoid what appears at the moment to be a rather voluminuous entry into the record here. I am perfectly willing to stipulate there are approximately (76) 27 beers in this country that all advertised on the basis of premium quality.

Mr. Barton: If your Honor please-

Hearing Examiner Hier: I want first to get something straight. What you are talking about as "premium" is not quality but price.

Mr. Mayer: Absolutely.

Hearing Examiner Hier: And you want me to constitute advertising you put in the record as referring to price

Mr. Barton: No, sir, the advertising of the responder will in itself contain the words "premium priced," the advertising of the other beers will contain the words "premium quality," unless I am mistaken.

Hearing Examiner Hier: There is no issue in this cas about quality?

Mr. Barton: Not as far as we are concerned.

Hearing Examiner Hier: Of the respondents or anybody else, is there!

Mr. Barton: Well, your Honor, I don't think that quite-well, the attorney for the Government here is obvi-

onsly taking the position that "premium" has some meaning—he doesn't define what "premium" means and we think we are entitled to put in evidence all the light that can be thrown on that, and certainly it is relevant that all of our St. Louis competitors advertise that their beers are premium beers.

(77) Hearing Examiner Hier: He is willing to stipulate that.

I know nothing about the beer business except as a consumer. "Premium price" would mean nothing to me except that a given brewer through its efforts was able to get the consumer to pay something more than he pays for the general run of beers and still make a profit. That is the way it would strike me, "premium price." But I don't want the record loaded with all of this material, Mr. Barton, if Government compset is willing, as he says, to stipulate that there are 27, or whatever the number is, beers who advertise premium quality or premium price.

Mr. Barton: If your Honor please, I think the effect of the stipulation is not quite as meaningful as the evidence in the record of the extent to which this is done and the long period over which it is done which these advertises ments and pictures will show.

Hearing Examiner Hier: If you gentlemen want me, by consent, of course, to take official notice of the fact that the average consumer or the average person, such as I am, is constantly bombarded with advertising signs, bar signs, placards, window displays, and what have you, that this or that or the other beer is a premium quality or a premium beer, I will do so.

Mr. Mayer: I am perfectly satisfied with that, sir.

(78) Hearing Examiner Hier: Is that agreeable with you?

Mr. Barton: If your Honor please, the stipulation goes to this effect, as I understand it: the St. Louis brewers, along with the other national brewers, have for an extended period of years so advertised.

Am I correct?

Hearing Examiner Hier: Is that agreeable?

Mr. Mayer: I have no personal knowledge of the length of time at all, but that is agreeable with me, that it is bong done presently, and I would assume that it has been done in the past.

Hearing Examiner Hier: I can say this for you, Mr. Mayer. When I was here 15 years ago bothering Mr. Ingamells on another matter that was being done.

Mr. Mayer: I will agree to the stipulatie a

Hearing Examiner Hier: All right. It is so stipulated, then,

Mr. Mayer: Off the record.

Hearing Examiner Hier: Off the record.

(Off the record discussion.)

Heaving Examiner Hier: On the record.

Mr. Barton: We have collected samples of advertished of Hyde Park Beer for January through August of 1952. Griesedick Brothers beer for a period from April, 1951 through April, 1955, and samples of Stag Beer advertising which is (79) put out by Griesedick Western, now Carling, for the period from March, 1952 to March, 1955, all of which demonstrate that each of these companies have utilized the term "premium beer" in connection with their advertising for that period. And I offer to prove that by submission of this advertising, but in view of the stipulation entered into by Government counsel the offer is not pressed.

By Mr. Barton:

- Q. You mentioned that the word "premium" is also used by a number of non-St. Louis breweries who sell beer in St. Louis.
 - A. Yes, sir.
- Q. And I ask you whether these are the brewers to whom you were referring, first of all, a Tudor Beer.
 - A. That is correct.
- Q. And they use the term "Premium Quality" on their can, do they not?
 - A. That is right.
 - Q. Who is Tudor Beer manufactured by, do you know?
- A. I think it is the Atlantic Brewing Company in Chicago, I am not sure.
 - Q. The can says the Best Brewing Company.
 - A. The Best Brewing Company in Chicago.
- Q. Here is a can of Sterling Pilsener Beer. It uses the term "Premium Quality", does it not?
 - (80) A. Yes, sir.
 - Q. Who is Sterling manufactured by, if you know?
- A. I presume it is a Chicago beer, I am not sure, Mr. Barton.
- Q. The can itself says "Brewed and canned by Sterling Breweries, Inc., Evansville, Indiana."
 - A. Yes, sir.
- Q. And then there is a beer sold in St. Louis, is there not, called 9-0-5 Beer?
 - A. That is correct.
 - Q. And it is described on the label as a premium beer?
 - A. Premium beer.
 - Q. And who is the 9-0-5 made by?
- A. According to the label 9-0-5 Brewing Company in Chicago.

- Q. Who sells it in St. Louis?
- A. The 9-0 5 Liquor Store.
- Q. And also there is a beer called Alpine Brand, which is described as premium beer in red letters on the label. And that is manufactured by Better Fox Brewing Company of Chicago.
 - A. Yes.
 - Q. And that is sold in St. Louis?
 - A. That is also sold in St. Louis.
- Q. Finally, there is a beer called Kold Brau, which is entitled, called "Eastern Premium Beer,"
 - (S1) A. Yes.
- Q. And that is manufactured by Schoenhofen Edelwess Company of Chicago, Illinois.
 - A. Yes.

Mr. Barton: I would like for a document entitled "Recapitulation of Anheuser-Busch Sales, 1941 to 1954", to be marked as Respondent's Exhibit 2.

(The document referred to was marked Respondent's Exhibit 2 for identification.)

(82) By Mr. Barton:

- Q. I believe you referred this morning to the production of Anheuser-Busch in the several past years and the percentage of industry?
 - A. That is right.
- Q. Is this a tabulation of Anheuser-Busch's sales size 1941 and the percentage of industry sales which Anheuser Busch had in that period (indicating)?
 - A. That is correct.

Mr. Barton: I offer it in evidence,

Mr. Mayer: No objection.

Hearing Examiner Hier: Admitted.

(The document referred to, heretofore marked for identification Respondent's Exhibit No. 2, was received in evidence.)

Hearing Examiner Hier: That brings up the point, Mr. Mayer, to what year do you confine the complaint!

Mr. Mayer: Primarily to the year 1954, sir, the period in which the price reduction was made by Anheuser-Busch in this area.

Hearing Examiner Hier: Primarily!

Mr. Mayer: Well, I mean added to the background, for I can't think of any other reason for being outside that particular scope at the moment.

Hearing Examiner Hier: All right.

(Si) By Mr. Barton:

Q. Now, of course, despite the fact that you had a percentage of the industry of some 7 per cent, between 7 and 8 per cent, your position in the important markets of the country didn't come up to that percentage, did it, in these years '53 and '54?

A. That is very true. As I indicated in the six principal heer sales States that account for almost 50 per cent of the total sales in the country, Anheuser-Busch in only one of those exceeded the industry average, and that State, Illinois, in which we had approximately 10 per cent, we were not first in that State. In all the other areas we were not second nor first, and not even a good third or fourth in many instances.

Q. In other words, who in those areas like, as you say, the larger States, were in the important positions so far as sales rank were concerned?

A. Generally speaking it would have been one of the large regional brewers. For example, in the area of Il linois and the area in which we are here, St. Louis and the surrounding territory, Falstaff, I would say generally, was the No. 1 brewer. In fact, according to their own reports they do their entire business, and I think, they ranked has year fifth in the industry. They do their business in just 26 per cent of the population of the United States, so that it they became national in scope, or if they acquired additional breweries, (84) they would finally wind up with sales of double that of Anheuser-Busch, because we sell out beer in 100 per cent of the population of the United States.

Q. In other words, Falstaff is selling in geographical areas covering 36 per cent of the population?

A. Yes, 36 per cent of the population.

Q. Whereas you are selling in geographical areas covering 100 per cent of the population?

A₄ 100 per cent of the population.

Q. Now, in that connection is there a record made of sales of packaged beer by the industry and by Anheuser Busch in each State each month, which shows the relationship between the same month in the prior year for industry sales and for Anheuser-Busch sales?

A. Yes, sir, there is.

Mr. Barton: Mark this for identification as Respondent's Exhibit No. 3.

Hearing Examiner Hier: How many pages is that!

Mr. Barton: 29, your Honor. This is Anheuser Buse industry packaged beer sales in barrels and per cent change from previous year for both industry and Anheuser Busel by State by month.

(The document referred to was marked Respondent's Exhibit 3 for identification.)

Mr. Barton: From July 30, 1953, through June, 1955.

(85) By Mr. Barton:

Q. I show you Exhibit 3 for identification and ask you whether that is such a record as I have described?

A. It is. It is prepared in our market research department.

Mr. Barton: I offer this in evidence, Your Honor.

Mr. Mayer: I don't see any particular relevance to this document which is being offered, but for general in formation I see no objection.

Hearing Examiner Hier: If you have no objection it will be admitted in the record.

(The document referred to, heretofore marked for identification Respondent's Exhibit No. 3, was received in evidence.)

Mr. Barton: Your Honor, I have a chart which portrays the figures total industry and Anheuser-Busch.

Hearing Examiner Hier: In other words, that is a graphic representation of 3?

Mr. Barton: That is right, and I offer this in evidence. Hearing Examiner Hier: I assume, since he had no objection to the other, he has no objection to that. Admitted in the record.

(The document referred to was marked Respondent's Exhibit No. 4 and received in evidence.)

(86) By Mr. Barton:

Q. I believe this morning there was a reference to regional breweries and general information requested as to size of various breweries. Now, have you had a case prepared—a tabulation prepared of breweries that have sold more than a million barrels in 1954, which include all of those?

A. That is correct.

Mr. Barton: I would like marked for identification a document entitled "Sales of leading breweries, Repeal through 1954," which includes all breweries whose report of 1954 sales were 1,000,000 barrels or more.

Hearing Examiner Hier: That will be Respondent's Exhibit 5-A and -B for identification.

(The document referred to was marked Respondent's Exhibit 5-A, -B and -C for identification.)

Mr. Barton: Your Honor, I offer Respondent's Exhibit 5-A and -B in evidence,

Hearing Examiner Hier: A, B and C, Mrs. Wick, Your objection, Mr. Mayer, if any.

Mr. Mayer: May I have just a moment, sir, to examine the document?

Hearing Examiner Hier: Off the record.

(Discussion off the record.)

Hearing Examiner Hier: Back on the record.

Mr. Mayer: I have no objection.

(87) Hearing Examiner Hier: Respondent's Exill's 5-Λ. -B and -C is admitted in the record.

(The document referred to, heretofore marked for identification Respondent's Exhibit 5-A. B and -C, was received in evidence.)

Ba Mr. Barton:

Q. Now, looking at Exhibit 5 A. B and C. I would like for you to tell us where the various brewers who are named on here are located, and where in general they do business, where their beer is sold principally.

A. We have covered Anhenser-Busch insofar as its

locations are concerned.

Schlitz is the next one on the page. They have breweries at Brooklyn, New York: Milwankee, Wisconsin; and Los Angeles, California. They, like Anhenser Busch, sell in all of the 45 States.

Palist have breweries at Newark, New Jersey; Mil wankee, Wisconsin; Peoria, Illinois; and Los Angeles, California. Their Pabst beer is sold throughout the country and on the West Coast. They also sell a beer known as East Side out of their Los Angeles plant.

Ballantine is located in Newark, New Jersey. They sell their beer, I would say, nationally. They advertise nationally and they sell nationally. They sell both beer and ale, of course.

- (88) Schaefer Brewing Company is located in Brooklyn, New York. They sell their beer throughout the entire New England States, the States of New York, New Jersey, Pennsylvania, and get down on the East Coast into Florida.
- Q. In other we do, they are what would be denominated as regional?

A. That is correct, sir.

Ruppert, located in Manhattan, New York, hey sell in roughly the same trade area as the Schaefer Brewing Company does. They will occasionally ship to further points. They have been in Texas at times. They have been all through the South at various times.

Liebmann is located in Brooklyn, New York. The trade name of their beer is Rheingold. They sell in most of the New England States, New York State, New Jersey, into Pennsylvania and down the Coast into Florida.

Falstaff have six brands, and they are located at St. Louis; Fort Wayne, Indiana; New Orleans, Louisiana; Omaha, Nebraska, and San Jose, California. I think I have covered six locations.

- Q. What is their general classification? Are they a local brewery or are they a regional brewery?
- A. They are definitely a regional brewery, and I might say they are almost—they are a major brewery insofar as share of industry is concerned, and as they expand their distribution, as (89) I mentioned before, they advertise their beers as the Nation's Toast from Coast to Coast, and they do distribute their beer from the Atlantic Coast to the Pacific Coast. While their statement indicates that they sell heavily in the areas where 36 per cent of the population is located, they do have distribution all the way from Florida to the West Coast.
 - Q. Where is their heaviest distribution, would you say
- A. Well, their heaviest distribution is within a radius. I would say, of 300 miles of each one of their plants.
- Q. In other words, they intensively cultivated the area adjacent to their six plant
- A. Very much so, sir, with tremendous advertising budgets and a concentration of their sales promotional efforts in that area.

The Miller Brewing Company are located in Milwaukee. Wisconsin, and do have national sales. However, depending upon your ability to get wholesalers, there may be many blank spots throughout the country.

And that same condition is true of Blatz, who is also located in Milwaukee. Their volume has been dropping and while they advertise nationally they no longer sell their beer in 48 of the States.

The Hamm Brewing Company have one plant at Minneapolis, Minnesota, or St. Paul, Minnesota, and the other plant is located in California. They have a widespread distribution, (90) ranging specially heavy through the middle section of the country all the way from Canada to the Gulf of Mexico, and in such important sales centers as Chicago, Illinois, and of course, as I indicated before, they have a pattern of pricing to meet the locals in some areas and in other areas they are a premium priced beer, if there is such a term, except that on the West Coast it is my understanding that they sell at the same prices as all the other beers out there, and they advertise as Eastern beer at Western prices.

- (91) Q. Now, if you will go to the second page, what is the situation with respect to Schlitz? Where are they located?
- A. Schlitz is located in Philadelphia, and they sell their beer generally in the area I would say within 300 miles of their plant.
 - Q. How about Pfeiffer?
- A. Pfeiffer is a Detroit brewery. They now have a second plant in Minneapolis, Minnesota. Their sales are in the, what we call the east-north central part of the country. They cover important markets like Cleveland and parts of Pennsylvania, Upper New York State.
- Q Where is Goebel located, and where do they sell principally?
- A. Goebel has a plant in Detroit, and also a plant in California. Their area of distribution very closely paral-

lels that of Pfeiffer in that they are in the east-north central part of the country, Michigan, Ohio, and of course on on the West Coast.

- Q. Now, where is Stroh located?
- A. Stroh is a Detroit brewery and their area roughly coincides with that of the Goebel area.
 - Q. And Lucky Lager, what part of the country is it in
- A. Lucky Lager have two plants, or I think they have three now. They had two, one in San Francisco and one is Los Angeles. Their sales are along the Pacific Coast States and I would say (92) throughout—or they are extending it throughout the Recky Mountain States.

Piel is a New Yorker who not so long ago also acquired one of the Trommer breweries in New York. Piel's are in the New York market and are very heavy in the metropolitan areas of Eastern Pennsylvania.

- Q. I notice Carling is the next. What is the story of Carling!
- A. Carling's have a plant at Cleveland, Ohio, and recently acquired the Griesedieck Western plant here in St. Louis. They also are just about ready to open a braid new brewery at Natic, Massachusetts, and have acquired land and have had enabling legislation passed in Georgia so that they can build a plant at Atlanta.
- (93) Q. Was Carling related to a Canadian brewing company in any way?
- A. Yes, that is quite—that company, they are just about the same as those of Anheuser-Busch, they have some. I believe, 14 operating breweries in Canada.
- Q. I notice that Carling is growing. From 1943 to— Mr. Mayer: Mr. Examiner, the figures speak for themselves, as far as what appears on here; and frankly. I

do not remember any cross-examination about the assets of any of these particular companies.

Mr. Barton: If your Honor please, I think the general subject has been gone over and we are entitled to develop it; it is a matter of industry position.

Hearing Examiner Hier: Well, the figures are in the exhibit.

Mr. Barton: All right.

Ba Mr. Barton:

Q. What is the situation with regard to Drewry; where are they located and where do they sell?

A. They are located in South Bend, Indiana; have acquired two breweries in the Chicago area and their sales can to the midwest part of this country, in Chicago and south into Tennessee and markets down there.

Now, the San Francisco Brewing Company, the trade name of that beer is Burgmeister and they sell throughout the Pacific Coast and are moving into the Mountain States of the country (94) likewise, have the same as Lucky Lager.

The next brewer listed here is Coors. Their plant is in Denver, Colorado and their area of distribution is constantly widening in all of the Mountain States. They are on the West Coast, they are in Texas, and they have gone as far east as Missouri.

- Q. They are very definitely a regional brewer?
- A. Very definitely so; very close to being national.
- Q. Where is Jackson—is that Jackson Brewing Company?
- A. Yes, sir. The trade name of that beer is Jax and is produced in New Orleans, Louisiana and is sold throughout the southern part of the United States.

National is located in Baltimore, Maryland, and have wide distribution in the area around Baltimore and Wash ington and into Virginia.

Q. What is the trade name of National?

A. Well, they have National BO and National Premius. Pearl is another brewer listed here. They are is Sa Antenio, Texas and their sales are in the group of Wester States—Texas, Arizona, Nevada and into that area ther—into New Mexico.

Q. Weil, now, looking at Exhibit 5, you will note that between 1952 and 1954 the sales of these regional—thesbrewers whom you have identified as regional browns have increased in many cases, in most cases very materially, while the sales of those browers whom you have identified as national, (95) including Anheuser-Busch, have decreased very severely. Now, what in your opinion at the factors which account for that trend and that change in those years?

Mr. Mayer: Mr. Examiner, I do not think that was covered on the direct examination, and I object to that question.

Mr. Barton: Your Honor, I am trying to explain what was raised in direct examination about the position of the company, and I do not think we can have it clear for the Examiner what the position of the company is unless this information is permitted to come in.

Mr. Mayer: Mr. Examiner, the exhibit speaks for itself—and I haven't any doubt but what the sales manager of every one of these breweries might have some reason to account for it, as well as the sales representative of Anheuser-Busch, that they went down for this reason or for any other reason.

Mr. Barton: If your Honor please, also the direct examination was rather extended on this question of premium prices and public acceptance and so forth, and I think this information goes to that issue also, which was raised on direct examination.

Hearing Examiner Hier: Objection overruled. You may answer.

Mr. Barton: Will you read the question?

(The pending question was read by the reporter.)

The Witness: Well, there are a number of factors. (96) I think you almost have to go into a little history of the beer business.

Back in the early days of re-legalized beer, most beer was sold as draft beer and very little was packaged beer. At one time about 75 percent of the beer that was sold was draft beer. The remainder was packaged beer.

The industry because of its fifteen years of Prohibition had not made very many great advances in packaging and was slow to move to a different kind of a market. Then the war came along and there were many hardships on the brewing industry.

The government had grain orders which restricted the use of grain. There were restrictions on the use of bottle caps and generally speaking during that time the small brewers were permitted additional allocations on a hard-ship basis.

In addition to that, the armed forces required that the brewers set aside 15 percent of their production for the armed forces and because the product of the well-known national brands was in greater supply that was taken up. The brands of local and regional beers were not used and were therefore available for civilian consumption.

Because of the cut-back in the over-all production of the beer industry the local and regional beers and actrouble to sell their products on the market and commungood prices for them and it was a natural result that these breweries became strong, financially in better condition and that after the war (97) they were able to do improvments in their plants and develop better packaging methods and were able to advertise more heavily than they had previously.

Then in 1953, in the early spring of 1953, most of the production in Milwaukee, Wisconsin, was shut down for an extended period because of the strike and the national brands of beer became in very short supply.

(98) Many of the people who preferred to drink Bud weiser at that time were unable to buy Budweiser because people who drank Schlitz or Miller or Pabst were unable to buy those brands.

The result was that the strike caused probably one of the greatest sampling campaigns for local and regional brands that could have ever occurred. And when her became plentiful again after the strike was settled in August of 1953 many of the people who during the period when national brands, including Budweiser, were not available switched to local and regional brands, they just certinued to drink local and regional brands. And as a direct result of this strike—which was for increased wages. Anheuser-Busch also had to sign contracts for increased wages for its brewers and bottlers. And in October October 1, 1953, the national brands increased their prices slightly.

Ba Mr. Barton:

- Q. Now, Mr. Hallquist, you have spoken of the growth that the regionals had. Was television any part of that, their advertising programs?
- A. Very definitely television was a major factor in their growth, because for the first time they had the same media available to them that was available to the national brewers, with shows or programs that were comparable to what anyone else could put on. In other words, take a show such as (99) "Dragnet." It might be sponsored locally by one company. It can also be bought as a local program. And the national brewers, as I mentioned this morning, the reason we have the total sales that we do have is because they are thinly scattered over all 48 states of the country. We don't have the concentration in any one area such as many of your strong local and regional brewers have, and as a result we can't match their advertising expenditures market by market.
- Q. I show you a document of advertising expenditures and ask you if this illustrates what you mean by that.
 - A. Yes, sir; it does. May I read it?
 - Q. Just indicate generally what it shows.
- A. Well, this compilation indicates in four major cities of the country the advertising expenditures of Budweiser as compared to the regional or local beer in the area. I think that is right.

Mr. Barton: I ask that this be marked, please. It is entitled "Advertising Expenditures by Anheuser-Busch, Inc. and Some Other Brewers in Some Metropolitan Markets."

Hearing Examiner Hier: Six.

Mr. Barton: Six.

(The document referred to was marked Respondent's Exhibit 6 for identification.)

Mr. Barton: I offer Exhibit 6 in evidence.

(100) Hearing Examiner Hier: Do you have any of jection?

Mr. Mayer: Before making any objection to this exhibit, if your Honor please, may I ask the witness severa questions concerning it?

Hearing Examiner Hier: Yes.

Mr. Mayer: Mr. Hallquist, what are the sources of the figures appearing on this exhibit?

The Witness: They are from media records, as I understand it, collected right at the source—in other words, from the newspapers and from the outdoor companies and from the radio and television companies in the particular markets.

Mr. Mayer: Was this acquired by Budweiser for use in this proceeding?

The Witness: Yes, sir.

Mr. Mayer: And why is it confined to only two or three companies here? Were the other figures unavailable for the other companies?

The Witness: I think just not to have too much in the record. I think we could get it from many other points it you wish it.

Mr. Mayer: Were these figures submitted voluntarily to Budweiser?

The Witness: Yes, sir.

Mr. Mayer: I object to the exhibit primarily, (101 Mr. Examiner, on the basis that it is irrelevant to this proceeding.

Hearing Examiner Hier: Didn't you stress advertising this morning in your direct examination?

Mr. Mayer: Not the amount, nor the advertising by area, nor anything else other than the content of the advertising. And that was related only to the advertising of Anheuser-Busch.

Mr. Barton: If your Honor please, I don't think you can go into part of this and not go into all of it. It is all part of the same picture, and the whole picture has to be developed in order to properly understand it.

Hearing Examiner Hier: What I am wondering about, Mr. Barton, is this. Supposing Budweiser was unable to or did not for some other reason advertise in Cleveland as much as Pilsener. What about it?

Mr. Barton: We have in this case as a result of counsel raising the question a matter of public acceptance and position of this company and this beer nationally and in various markets. And I think that advertising expenditures certainly bear on those two issues,

Hearing Examiner Hier: It seems to me that public acceptance is indicated by sales rather than an effort to get sales.

Mr. Barton: As I recall it, during the direct (102) examination there was some indication that this advertising was designed to induce higher prices to be paid for the product. And it seems to me that the more information that can be shed on this problem the better it can be understood. The fact is that Anheuser-Busch' sales as shown by previous exhibits introduced here have been a small percentage in most of the markets of the country, a relatively small percentage. This index of advertising expenditure, actual expenditures by the competing brewers

in these markets, go far to explain that. I don't want to burden the record with any number of these, but I do have two which bear on the problem, one, this general one prooffered, and I have another one here for beer advertising in the Washington, D. C. area of the competing brands, which are merely illustrative examples of the general picture.

Hearing Examiner Hier: It seems to me obvious gentlemen, that when you scatter your shot over the 4s states you necessarily have a thinner spread of shot that you did when you concentrated in three states, four states I don't see anything peculiar about that.

But on the other hand, Mr. Barton, consumer accept ance is certainly indicated, not by advertising, but by sales And the sales figures are in the record. The efforts to 200 business do not seem to me to have any part in this case as long as we have the results. And we do have 1100 the results.

I think the objection of irrefevance is well taken.

Mr. Barton: May I have the next exhibit marked for identification?

Hearing Examiner Hier: Respondent's Exhibit 6 is rejected on the objection of counsel in support of the couplaint.

You may mark the next exhibit, Exhibit 7-A, B and !

(The document referred to was marked Respondent's Exhibit 7-A, B and C for identification.)

Hearing' Examiner Hier: And those are advertish; expenses, Mr. Barton?

Mr. Barton: In Washington, D. C., by the respective competing brands.

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I would like to ask for a reconsideration of this on the Washington, D. C. basis. That is the market referred to in the complaint.

Hearing Examiner Hier: That is true,

Mr. Barton: And since it is referred to specifically in the complaint it seems to me that we should be entitled to put into the record that the information perhaps irrelevant elsewhere is certainly relevant insofar as Washington, D. C. is concerned.

Hearing Examiner Hier: The locality doesn't have (104) anything to do with it. It is a question of putting in advertising, as I said before, when you have more definitive barometers, namely, sales. If you want to put in the sales there is some point in it.

Mr. Barton: The sales are in the record.

Hearing Examiner Hier: Yes. But I still don't see the pertinence of advertising expenditures at this stage of the case.

I told you six was rejected. Seven-A, B and C is offered for the same purpose, and the same objections apply, and there will be the same ruling.

(105) Q. I believe you were detailing the reasons for this drop off in Anheuser-Busch and the corresponding rise in the Regional brewers and you had gotten to the point of Milwaukee strike and the things that followed it.

A. Yes. Shortly after the Milwankee strike was settled, the Milwankee brands as well as Anheuser-Busch in St. Louis made a small increase in their prices. Now, increases in prices of course go through several changes before they reach the consumer. In some instances they are passed along; in other instances they are multiplied a few times. In the case of our prices to the wholesalers.

they went up in the neighborhood of 50 cents. The whole-saler tagged on anywhere from 5 to another 15, and when they got to the retailer in many of the on-premise outlets throughout the country, the price went up by \$1.20. It had a very marked effect on the sales of the so-called national brands of beer, because in many areas the local-did not go up and the regionals did not go up. There was a pattern, but there was no reason to the pattern whatsever, so that if there was a differential before, the differential widened at that time.

Q. And of course there were differentials created when none had existed before?

A. Where none had existed before, and wider differ entials.

Q. Was there a difference in that connection between the on-premise and the off-premise outlets?

(106) A. Very considerably, because in the on premisoutlet—and that is where Anheuser-Busch over the years has had its biggest sale, the on-premise retailer does not generally mark up in units of less than 5 cents, so that while the price increased to the retailer himself, it might have been less than a penny per bottle, his price tended to rise five cents per bottle, and in some areas differentials were created as high as 10 cents per bottle over the bar.

Q. That is differentials between Anheuser-Busch and another brand!

A. And another brand.

Q. Now, how about the package stores?

A. The package stores of course generally mark upon a percentage basis and where the locals and regionals hav gone up at the same time that the Milwaukee breweries and Anheuser-Busch did, the increase was approximately

the same for both groups of brands. However, it again forced us a little farther up on the price scale, and many customers, instead of stopping their beer consumption would just move down a bracket and continue to buy at the price they formerly bought Budweiser and other brands for.

Q. Now, what would you say the most important result of this trend has been, the changeover, the consumers who have switched over. Have they come back, those who switched to the regional in the meantime, or have they come back by the end of 1954?

(107) A. No, sir.

Mr. Mayer: I object, Mr. Examiner. I think that is elearly outside the scope of the direct examination. It may be interesting, but it certainly is not related to the direct examination this morning.

Hearing Examiner Hier: I agree with him. Objection sustained. Strike the answer.

By Mr. Barton:

Q. When you talk about the on-premise market, what is it precisely that you mean?

A. The tayern, the bar, the restaurant, the hotel, the club, wherever beer is sold for consemption on the premises. In other words, where you would drink the beer at the place you purchased it.

- Q. And the unit of sale there is generally what?
- A. Generally single bottles or by the glass.
- Q. And the off-premise market is grocery stores?
- A. It would be grocery stores or liquor stores, drug stores, anyone who is licensed to sell for off-premises consumption, and sales there are usually in multiples of one.

In other words, the package in six can or bottle containers, in 24 can or bottle containers, and usually the unit of pur chase is above a single unit.

Q. And in your experience what is the trend in the industry toward distributionwise; is it toward the or premise outlet or (108) toward the off-premise outlet.

A. It has been-

Mr. Mayer: I object, Mr. Examiner. I don't see any relevance to the conclusions of the witness on that point either to the direct examination.

Mr. Barton: It is going into this question of premius price and trade acceptance, consumer acceptance. I thin, the general question of this type is relevant.

Hearing Examiner Hier: You may answer. The objection is overruled.

The Witness: I would like to hear the question again.

Hearing Examiner Hier: How are your sales trends now, on-premise versus off-premise.

Mr. Barton: It is the industry, Your Honor.

The Witness: Well, I indicated part of that in my earlier comment, in that early in the days of legalized beer, there was sold 75 per cent draft beer and 25 per cent package beer. That trend has reversed itself until now better than 75, it is about 76 per cent of the beer is sold in packages and only some 24 per cent in draft beer, with the result—and also perhaps caused in great measure by the growth of super markets who are merchandisers of price, by the change in living habits of people. It started with television, which has caused a trend away from the on-premise outlet and a tremendous (109) increase in the off-premise outlet.

Bu Mr. Barton:

- Q. What effect does that have insofar as Anheuser-Busch is concerned?
- A. Well, that is a price market. The off-premise market is a price market. First of all, the brands are marked up at relatively low percentages. Some of them would actually amaze you, and it isn't much you can do to develop sales in those outlets except for price and heavy advertising schedules in the local areas.
- Q. Mr. Mayer has asked you questions concerning the existence of a regularly established differential between Budweiser and local and regional beers, and I believe you asswered that there is not now and never has been any regularly established differential between Budweiser and regional and local beers, either at the wholesais or at the retail level, is that correct?
 - A. That is correct.
- Q. And I believe you also stated that any differential that may have existed or set of differentials that may have existed are not uniform from market to market and change from time to time, and that they vary at the retail level.
 - A. That is very correct, sir.
- Q. For example, isn't it true that a substantial number of outlets in the important markets of the country have sold (110) Budweiser and all beers at the same price over the bar?
 - A. In a great many places in the country.
- Q. Now, what information is available to Anheuser-Busch with respect to this whole subject of prices charged by wholesalers to retailers and by retailers to consumers for Budweiser and for competing brands of beer? First of all, do you have a territorial report system?

A. Yes. I was just going to describe that. Our field men are known as district managers and district salesmen and those men turn in three times a year—

Mr. Mayer: Mr. Examiner, I hate to interrupt the answer, but if I may I would like to object to this question I don't see where the internal reporting system of Bud weiser or Anheuser-Busch is related to the direct examination. Perhaps if I knew what he was trying to show by the answer to his question it might become relevant.

Mr. Barton: Your Honor, if you will permit me to go a few more questions I think the relevance will be quite clear.

Mr. Mayer: Relevancy to the direct examination.

Mr. Barton: Yes, the direct examination.

Hearing Examiner Hier: He wants to know where a gets his information and how he gets it. Go ahead.

The Witness: Our district managers and district sales men visit the markets of our wholesalers from one to, say, three times a year, and at the end of each regular scheduled (111) visit to the territory they make out a territorial report. In addition to other information the territorial report carries rather complete information concerning prices to retailers and prices to consumers, of various packages and in units. Our branch managers also send in such a report at the end of each quarter.

(112) Q. Now, I show you—first, let me have this marked for identification.

Mr. Barton: This is a document entitled "Territorial Report."

Hearing Examiner Hier: That will be Respondent's Exhibit 8.

(The document referred to was marked Respondent's Exhibit No. 8 for identification.)

Ba Mr. Barton:

- Q. Looking at Respondent's Exhibit 8 for identification, is there a place on the form for a report on prices at a level of the wholesaler to retailer, and retailer to consumer!
- A. On the reverse side of the form we have the national brands listed and space for local and regional brands, and we get prices from the wholesaler to the retailer. Then we also have space provided for prices to consumers off-premise as well as on-premise.
- Q. How often are those reports received by Anheuser-Busch from its district managers or district salesmen!
- A. We will range anywhere from one to four per year per wholesaler location, and we get four reports a year from our own company locations.

Mr. Barton: I would like to have these next three documents marked for identification as Respondent's Exhibits 9-A through -E, 10-A through -D and 11-A and B.

(113) (The documents referred to were marked Respondent's Exhibits Nos. 9-A through -E: 10-A through -D, and 11-A and -B for identification.)

By Mr. Barton:

- Q. Beside the territorial reports which have been received from time to time, what other sources of information are available in the files of Anheuser-Busch with respect to this matter?
- A. In April of 1954 because of the very drastic dropoff in our sales which commenced in October of '53, at the direction of management I prepared and sent to the field

through the sales manager a comprehensive survey to find out what prices were prior to the price increase and what happened after the price increase, both at the retail and consumer levels.

Mr. Barton: Will you mark this as the next exhibit for identification!

(The document referred to was marked Respondent's Exhibit No. 12 for identification.)

Bu Mr. Barton:

Q. I show you Respondent's Exhibit for identification 12, and ask you whether that is a copy of the survey repet which you referred to (handing document to witness)!

A. It is the report, that is, the survey form that we had mail to our field men for the instructions that are included therein.

(114) Q. How many markets did you have surveys.

A. We actually completed, I think, either 76 or 5 markets.

Q. And those were located where?

A. In I would say every State of the United States They were samples not picked for any particular reason

Hearing Examiner Hier: Mr. Barton, may I ask what became of 9, 10 and 11?

Mr. Barton: 9, 10 and 11 were special summaries that were made of territorial reports. I have not offered there yet, but I plan to do so.

Hearing Examiner Hier: All right, let me have thereplease.

Mr. Barton: Unfortunately, they have no descripted on the top of them (handing documents to the Examinet

Ba Mr. Barton :

Q. After Respondent's Exhibit 12 for identification was sent out, you got replies back from the field, I take it!

A. That is correct, sir.

Mr. Barton: Off the record.

Hearing Examiner Hier: Off the record.

(Discussion off the record.)

Hearing Examiner Hier: On the record.

Mr. Barton: Your Honor, I offer in evidence respondent's exhibit, the territorial report, No. 8.

Hearing Examiner Hier: You have no objection, do you!

(115) Mr. Mayer: The form? No. sir, I have no objection to that.

Hearing Examiner Hier: All right. Respondent's Exhibit No. 8 is admitted.

(The document referred to, heretofore marked for identification Respondent's Exhibit No. 8, was received in evidence.)

Mr. Barton: May we take a short recess, Your Honor! Hearing Examiner Hier: Yes. Before we do, I want to know how long you will be running with this witness. I have to make a telephone call, but I will stay here as long as you wish.

Mr. Barton: At least another hour, Your Honor. Hearing Examiner Hier: Another hour, all right.

And then you will have some redirect?

Mr. Mayer: Yes, sir.

Hearing Examiner Hier: We will take a short recess of five minutes.

(A short recess was taken.)

(116) Hearing Examiner Hier: On the record.
Mr. Barton: I will offer Exhibit 12 in evidence.
Hearing Examiner Hier: Do you have any objection?
Mr. Mayer: May I have just a moment to look at it?
May I ask Mr. Hallquist a question about it?
Hearing Examiner Hier: Yes.

Mr. Mayer: Mr. Hallquist, referring to Respondent's Exhibit for identification 12, and on the fifth page thereon would you describe for me the significance of the two columns of figures appearing, one under "percent, 2-month package," and the other one under "decrease sales, draft"?

The Witness: It is percent of decrease in two months' sales, package and draft, and that is how much our business was off for the corresponding period a year before. In other words, if this was January and February and this corresponded, we were 42 percent down for the same period a year before.

Mr. Mayer: Was that attached to and sent to encli one of the areas which were to conduct this survey?

The Witness: For that particular region, yes sir. In other words, an individual form was sent to the district manager of Manchester, New Hampshire—he did not get this particular sheet.

Mr. Mayer: Who did get this particular sheet?

The Witness: The regional manager: regional sales manager; and of course the sales manager at St. Louis had it, (117) too—all of them for all of the eight regions.

Mr. Mayer: I have no objection.

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Hearing Examiner Hier: Respondent's Exhibit 12 is admitted in evidence.

(The document referred to, heretofore marked Respondent's Exhibit 12 for identification, was received in evidence.)

Ba Mr. Barton:

- Q. Now, was a tabulation of the replies to that survey made to management?
 - A. That is right. That was under my direction.
 - Q. And is this a copy of that tabulation that was made!
 - A. That is right, Mr. Barton.

Mr. Barton: I ask this be marked with the next exhibit number.

(The document referred to was marked Respondent's Exhibit 13 for identification.)

Mr. Barton: At this time, your Honor, I offer in evidence Respondent's Exhibit 13.

Mr. Mayer: I have the same objection I had to the document he offered previously; it is not connected to the direct examination.

Hearing Examiner Hier: There is a difference between, Mr. Barton, the source of the information or how it was obtained, this information itself, and the information in 13, obviously, from my casual inspection of it. I think it is anticipatory and not part of the direct examination, not a (118) proper part of the direct examination.

Mr. Barton: May I ask a question of the witness? Hearing Examiner Hier: Yes.

By Mr. Barton:

Q. Doesn't this exhibit and the information contained in the survey show that there can't be, there is not and can't be any established differential—

- A. Very definitely so.
- Q. —in the various markets between Budweiser and the other brands!
- A. Especially because it shows there is a marked change in differential as concerns the period prior to October and the period after October, I mean it shows the fluctuation in differential that was created.

Hearing Examiner Hier: It still does not make it material, for the simple reason the gentleman has stated there is no such differential and there is nothing to contradict that in the record as yet and therefore corroboration is out of place.

Mr. Barton: Very good, your Honor.

Hearing Examiner Hier: And unless something indicates he is inaccurate in his statement I won't receive any corroboration. We will mark that as rejected temporarily.

> (The document referred to, heretofore marked Respondent's Exhibit 13 for identification, was rejected temporarily.)

(119) Mr. Mayer: May I ask, even prior to the rejectation, is that the only basis on which Mr. Barton infended to offer this document?

Hearing Examiner Hier: It is the only basis I heard. I do not know if it is the only basis or not.

By Mr. Barton :

Q. Now, what was the situation in Detober 1953 when Anheuser-Busch raised its prices slightly in the variets parts of the country with respect to whether or not other brewers raised their prices?

Mr. Mayer: Objection. That was not covered in the direct examination.

Hearing Examiner Hier: Well, it is already in the record, the fact that the Milwaukee breweries raised their prices slightly as the result of the strike of Anheusers Basch; I have heard that twice,

Mr. Barton: Not this question as put in this instance— Hearing Examiner Hier: Read back the question.

(The pending question was read by the reporter.)

Mr. Mayer: That is already in.

Hearing Examiner Hier: He testified the Milwaukee breweries did. You may have it if you want to duplicate it.

The Witness: Well, there were a great many changes in various parts of the country. For example, in New England, the New England brewers increased their prices.

(120) In New York City, in New York the New York brewers increased their prices, in New York, but did not do so in the southern part of New Jersey because in that area they competed with the Philadelphia brewers who did not raise their prices.

In Pittsburgh, the breweries there increased their prices in Pittsburgh itself and the surrounding communities. However, they did not raise their prices where they were in competition with the Philadelphia breweries or with the Ohio brewers who did not increase their prices.

That same general pattern prevailed—in Chicago, the local brewers increased their prices at the time that the national brands increased their prices. The Detroit brewers or the Michigan brewers, they did not increase their prices. Some of the regional breweries increased their prices and rescinded their price increases shortly after they were supposed to have gone into effect. In fact, some of them, I was told, rebated their customers the amount of the increases that they had effected.

In California the brewers did go up in price. So, there was no established pattern any place in the country.

Bu Mr. Barton:

- Q. Now, do you keep a record of the sales of Anhenser. Busch of Budweiser by wholesalers and by the Anhenser. Busch branches to retailers?
 - A. Yes, sir.
 - Q. On a monthly basis!
- (121) A: Yes, sir, they report to us every mouth and they are accumulated.
- Mr. Barton: I would like to have marked for identification this document entitled, "Wholesaler sales to retailers, package beer cases, 1952-1955.".
 - (The document referred to was marked Respondent's Exhibit 14 for identification.)

Bu Mrs Barton:

- Q. Now, is Exhibit 14 for identification a tabulation of such sales by months of package beer in the period 1952 to 1955?
 - A. That is correct, Mr. Barton.
 - Mr. Barton: I offer Exhibit 14 in evidence.
- Mr. Mayer: May I ask a question, please, of the witness?

Hearing Examiner Hier: Yes.

- Mr. Mayer: Mr. Hallquist, are there included in this statistical tabulation cases as you have them computed down here, the sales of these 17 or 18 branches of Anheuser-Busch!
- A. These are the entire sales by wholesalers and branches to the retail customers throughout the country.

Mr. Mayer: What type of customers did they include, do they include all the customers of Anheuser-Busch for Budweiser!

The Witness: Yes, sir.

Mr. Mayer: I have no objection.

(122) Hearing Examiner Hier: Respondent's Exhibit 14 is admitted in the record.

(The document referred to, heretofore marked Respondent's Exhibit 14 for identification, was received in evidence.)

By Mr. Barton:

Q. Now, looking at Respondent's Exhibit 14, what was the situation with respect to Anheuser-Busch sales of Budweiser from wholesalers and branches to retailers in the latter months of 1953 as compared to the prior year?

Mr. Mayer: Objection. The exhibit will speak for itself.

Hearing Examiner Hier: This is prior-

Mr. Mayer: Yes, sir, 1952 to 1955, isn't it?

Mr. Barton: That is right.

Hearing Examiner Hier: Sustained.

Mr. Barton: Very good.

By Mr. Barton:

- Q. Now, does Anheuser-Busch keep a record of the shipments of packaged beer to the trade by breweries by months?
 - A. Yes, sir, it does.
- Q. And does it also keep a record and is there a budget prepared of sales volume?
 - A. Yes, sir, there is.

Q. By months, by breweries?

(123) A. By months, yes, sir.

Mr. Barton: I ask this document be marked with the next exhibit number, entitled, "Package beer shipments compared to budget 1950-1955."

(The document referred to was marked Respondent's Exhibit 15-A and -B for identification.)

Ba Mr. Barion:

Q. Now, does Exhibit 15-A and -B show the package beer shipments by months from the three breweries—8t. Louis, Newark and Los Angeles—both actual and budget for the period 1950 through 1955?

A. Yes, it does,

Mr. Barton: I offer it in evidence.

Mr. Mayer: For what purpose is this exhibit offered, if the Examiner please?

Mr. Barton: Your Honor, it is offered on the point alleged in the complaint and raised in the interregation by counsel as to the position of Anheuser-Busch—''leading national brewer''—and the question of the continued public acceptance of the brand.

Hearing Examiner Hier: I would think, Mr. Barton, to put in any data—the shipments are included more or less in the sales, are they not?

Mr. Barton: That is true. There is one additional point here, your Honor, it shows the budget, what was expected, hoped and expected monthly, and the degree of correlation (124) between actual shipments and budgeted shipments over a period of years and the relation ship that existed in 1954 and late 1953.

Hearing Examiner Hier: I do not see how you can make anything out of that; that is, that the brewery expected April sales to be 91,000 and they actually only hit 41,000—

Mr. Barton: I think it bears on the point, your Honor. Hearing Examiner Hier: I do not think so, Mr. Barton. It seems to me that actual sales for these months are already put in the record and that those actual sales already in the record are the safest and surest and sole criterion and that such things as expectations or inventory and over-age and under-age and so forth, are unreliable; and I will sustain the objection.

Mr. Barton: Very good, Your Honor.

Ba Mr. Barton .

Q. Now, Mr. Hallquist, you described, you testified about the abrupt sales reversal which Anheuser-Busch had in the late months of 1953 after October. Now, will you tell us what action was taken in the immediately following months in an effort to reverse that sales trend?

Mr. Mayer: I have objection, if your Honor pleases. The statistics will show the sales of Anheuser-Busch over the period of time he is talking about. Now, the reason for the (125) decline in sales of that time may well be part of his defense but that certainly was not part of the prima facie case nor the direct examination this morning.

Hearing Examiner Hier: That is not what he is asking. He is asking what action was taken.

Mr. Mayer: Well, it would apply to the action taken by the company, too. What difference does it make as to the action it was taking?

Hearing Examiner Hier: You brought in part of the action this morning, did you not?

Mr. Mayer: Only in the sales figures, yes, sir-

Hearing Examiner Hier: That they advertised, they put out advertising for that purpose—well, I don't know that.

Mr. Mayer: Well, if your Honor pleases, does that make relevant any other action taken by the company twenty years prior to this?

Mr. Barton: I am not asking about twenty years prior to this.

Hearing Examiner Hier: He is asking about the last two months of the calendar year 1953. Is that right?

Mr. Barton: That is right.

Hearing Examiner Hier: You have shown part of 1953, he wants to show the whole. Objection overruled. You may answer.

The Witness: Well, for some time the subject of the (126) cause of our drop-off in sales was a subject of a lot of meetings and a lot of conversation and out of that emerged different thoughts and different ideas. One of them was, of course—we had done some things in the St. Louis market prior to the fall of 1953 to develop additional sales in the St. Louis market and we were interested, management was interested and had been interested for some time in doing a better sales job in the St. Louis market and so that one of the things was to go after additional business in St. Louis.

We knew that or we felt, some of us felt that price was the answer and we considered rolling back our price increase that was made in October: but we weren't too sure of what results would come from that, because once

an on-premise retailer goes off, and of course that is where the bulk of our sales lay, he is reluctant when he goes up by \$1.20—and even though his cost increases, it may be 15, 20 or 25—or if you reduce your prices the same amount, he is mostly reluctant to lose that additional revenue he has been getting for some time, especially when it is on the lesser part of his sales volume.

(127) We also considered other things. We considered new products. And as a result of that we eventually came out with Busch Lager and Busch Bayarian, two additional makings bears.

We also began exploring very early, in the early part of 1954 different sized packages for Budweiser, in the hope that we might be able to accelerate or increase our consumer demand by bring out, say, smaller sized packages that might retail at a slightly less price.

By Mr. Barton:

Q. You mean the same price as the regional and local brands!

A. As regional and local beers. Of course, those things all take time. And as a matter of experiment we dropped the price in St. Louis in January, January 4, 1954, to find out before we went out nationwide on any kind of a cat back just what the result would be,

It was obvious after a short while that that wasn't the answer. And by that time we weren't sure, very frankly, whether our beer had the taste qualities that people wanted or net. So in June we dropped our price the rest of the way in St. Louis to give our brand a free play with all the other brands in St. Louis.

In the meantime there were price experiments being conducted in other parts of the country.

Q. For example, where?

(128) A. For example, in Memphis, the entire state of Ohio, where we rolled back our prices to almost the same as we had in 1953. Some of those experiments are still going on.

Q. Was there any particular reason that you picked pricing rather than new packages in Ohio!

A. Well, in Ohio you are not permitted to sell any other packages than those we presently have, in fact we can't even sell the seven-ounce over there. You see, this business is regulated differently in almost every state in the union. In some places some packages are legal, in other places there are no restrictions whatsoever on packing. And there are restrictions in merchandising effort

In St. Louis here we wanted to conduct a taste test similar to that which the local and regional breweries had during the period of the Milwaukee strike. We can't use many of the merchandising methods of other companies. In other words, there are restrictions against tied deals, you can't give two for the price of one, you can't have a one cent sale, you can't put some glasses with a case of beer as an inducement to buy. There are so many restrictions that we really do not have many ways of competing except for displaying our product and putting, it up for sale. Price is the only thing that you can work with.

Q. In other words, the St. Louis price reduction was a part of a general program of experimentation in attempting (129) to reverse that sales trend?

A. Very definitely, to find out more about how we could do it.

- Q. When you reduced the price in January of 1954 I think you testified that you eliminated the 25-cent or the 50-cent differential that had existed between Budweiser and Falstaff, for example.
 - A. That is correct.
- Q. And what was the effect in terms of sales in St. Louis by the reduction overall?
- A. We did have some increase in sales. However, it wasn't much more percentagewise than we had been enjoying prior to that time. And of course we had other factors that entered the picture. We had the new pedal system of delivery which gave us closer attention and coverage of our customers, and we had additional advertising efforts, and we had a sales organization that had been split, so that we concentrated more heavily on the off-premise markets. So that all the factors, certainly some of them had some bearing on the small increase that we did get.
- Q. As I understand it, the pedal system is to be distinguished from the so-called telephone order system?
 - A. That is right.
- Q. And up until January of 1954 you had used the telephone order system while your competitors were using the pedal (130) system?
- A. That is right. We didn't really get into full operation with our pedal system until the latter part of Febmary.
 - Q. Of 1954?
 - A. Of 1954.
- Q. Now, in connection with the St. Louis problem you again lowered your price in June of 1954?
 - A. That is correct.

- Q. How long did you hold the price, how long were you selling in St. Louis at that price, the same price Falstaff was?
- A. Until March 1, 1955. And then we increased our prices.
 - Q. And how much did you increase it?
- A. We increased our prices on the 24-12-ounce returnable carton by 45 cents.
- Q. And what is the present differential between your price and Falstaff's price in St. Louis?
 - * 30 cents per carton.
 - . In other words, Falstaff-
- A. Falstaff and the other St. Louis beers increased their prices at about the same time, or announced increased prices, and increased their prices from \$2.35 to \$2.50.

Hearing Examiner Hier: You didn't go all the way back up to where you were in 1953, did you?

(131) The Witness: We did not, sir.

Hearing Examiner Hier: What are you charging now for 24 12-ounce retail regular?

The Witness: \$2.80.

Mr. Barton: That is as compared to \$2.93.

Hearing Examiner Hier: Yes.

Mr. Barton: I would like next to mark for identification the document entitled "New Packages and Busch Lager."

Hearing Examiner Hier: Sixteen.

(The document referred to was marked Respondent's Exhibit 16 for identification.)

By Mr. Barton:

Q. I show you Exhibit 16 for identification and ask you what it is.

A. This is a record of the new packages that have been introduced in Busch Lager, the markets in the country to which they have been shipped, and the date, and the number of markets within each date.

Mr. Barton: I offer Exhibit 16 in evidence.

Mr. Mayer: May I inquire?

Mr. Hallquist, is this exhibit confined to Busch Lager?

The Witness: No, sir.

Mr. Mayer: It is not. And does this exhibit (132) show all the locations in which you have entered these various types of containers?

The Witness: It gives the number of locations within each state.

Mr. Barton: The date is on there.

Mr. Mayer: In other words, only one place in the District of Columbia, for instance, on the 10-ounce can?

The Witness: There is only one market there.

Mr. Mayer: One entire market?

The Witness: That is the entire market in the District of Columbia, yes.

Mr. Mayer: In other words, in other states, like in Illinois, you have 28 markets?

The Witness: Yes, at each wholesaler you might have two or three or half a dozen towns, so it doesn't mean a town it means a market according to our records.

Mr. Mayer: I object to this exhibit, Mr. Examiner, on the basis of relevancy. This exhibit is clearly irrelevant to any of the direct examination of this witness.

Hearing Examiner Hier: I don't recall anything being gone into on direct examination about new brands, new packages.

Mr. Barton: I think specifically that is true, there was nothing gone into on new brands. But counsel did (133) go into what was done. One aspect after January 1, 1954, one aspect of what was done was the reduction of price in St. Louis to that of the competing brands, who had over 80 percent of the market for package beer.

Hearing Examiner Hier: That is true, but-

Mr. Barton: This is another aspect of the picture of what was done.

Hearing Examiner Hier: Nes, but you have developed from him that they did bring out the new brands of beer, that they did consider packaging and did try to repackage where they were able to. This exhibit, however, Mr Barton, is the detail thereof, which it seems to me is appropriately part of your defense and not as a part of the case in chief, and I think it is being gone into anticipatorily. I am not going to receive it at this time. I will sustain the objection for the present. I am not saying the exhibit is incompetent when you get to your defense, though.

Mr. Barton: I would like the document entitled y Schedule of City Sales Department Employees' marked.

(The document referred to was marked Respondent's Exhibit 17 for identification.)

Mr. Barton: Your Honor, this morning during the examination of Mr. Hallquist this clocument was referred to by counsel in connection with questioning his employees. I offer the document in evidence. It gives the number of (134) employees during certain periods of the year.

Hearing Examiner Hier: Yes, I remember that. You have no objection to this, do vou?

Mr. Mayer: No. sir.

Hearing Examiner Hier: Seventeen is received.

(The document referred to, heretofore marked Respondent's Exhibit 17 for identification, was received in evidence.)

(135) Mr. Barton: Your Honor, I would like to have this marked with the next exhibit number.

Hearing Examiner Hier: 18.

(The document referred to was marked Respondent's Exhibit 18 for identification.)

Hearing Examiner Hier: What is it?

Mr. Barton: It is a compilation and tabulation of packaged beer sales by brewers in St. Louis and St. Louis County for the period from 1938 through July, 1955, which is the most recent figure.

Hearing Examiner Hier: Aren't the five of the years of that already in the record?

Mr. Barton: Not the last five years, Your Honor. As I recall it, the figures that counsel put in were only up through November and December, 1954, and in addition these figures are more detailed and more descriptive. They merely complement what is already in, but I think they bear on this particular problem of great urgency.

Hearing Examiner Hier: All right. Do you have any objection?

Mr. Mayer: No. I have no objection.

Hearing Examiner Hier: Mr. Mayer has no objection, so it is admitted in the record.

(The document referred to, heretofore marked for identification Respondent's Exhibit 18, was received in (136) evidence.)

Mr. Mayer: May we go off the record a minute?

Hearing Examiner Hier: Yes. You may go off the record.

(Discussion off the record.)

Hearing Examiner Hier: On the record.

Mr. Barton: I would like the next exhibit marked for identification. It is entitled "Packaged beer sales in the City of St. Louis and St. Louis County," and it is a graph corresponding for the years 1950 through 1955, July, to the information submitted in a prior exhibit.

Hearing Examiner Hier: This is in graph form!

Mr. Barton: That is right. It extends the graph submitted by the Government to the present date (handing document to the Examiner).

Mr. Mayer: I am sorry. Did Mr. Barton offer that? Mr. Barton: Yes, I did.

(The document referred to was marked Respondent's Exhibit 19 for identification.)

Mr. Mayer: I have no objection.

Hearing Examiner Hier: Admitted.

(The document referred to, heretofore marked for identification Respondent's Exhibit 19, was received in evidence.)

(137) Hearing Examiner Hier: There is one question about this, Mr. Barton.

Mr. Barton: Yest sir.

2

Hearing Examiner Hier: You say packaged beer sales and yet you have it in barrels. I take it that what you have stated in the full context would be in barrels!

Mr. Barton: Yes, sir. The relationship is 13.77 statistical cases to the barrels.

Ba Mr. Barton:

- Q. Mr. Hallquist, did you have prepared a projection based on sales by the four St. Louis brewers in 1952 and 533
 - A. I have.
- Q. Of the sales of packaged beer which they would have had in St. Louis had there been no reduction by Anheuser-Busch?
 - A. That is correct.
- Q. Now, is this a copy of that projection (handing document to witness)?
 - A. Yes, it is.

Mr. Barton: I ask that the exhibit be marked. Hearing Examiner Hier: 20.

(The document referred to was marked Respondent's Exhibit 20 for identification.)

Hearing Examiner Hier: How many brewers are there there?

Mr. Barton: Four, Your Honor, the four St. Louis (138) brewers.

I offer Exhibit 20 in evidence. I might say, your Honor, that it shows that it is based on the sale of total in St. Louis and St. Louis County, of each of the four brewers and it shows the projection based on '52 through '53 sales, had there been no price reduction. That is, '52 and '53, and it shows actual share of market also.

Hearing Examiner Hier: Actual share of market!

Mr. Barton: That is right. It is merely an addition of the projection. Actually the share of market is in the record in numbers. It is not an graph form. These are

the graphs which have been introduced, which are not share of market, but are total packaged beer sales.

Hearing Examiner Hier: I take it the projection is represented by the straight unbending or whehanged lines!

Mr. Barton: That is right, Your Honor.

Mr. Mayer: What was the purpose, Mr. Barton, for the introduction of this exhibit, please?

Mr. Barton: The purpose is to show a comparison of the actual sales in the St. Louis area, what the area is, with what the projected sales would have been had there been no reduction by Anheuser-Busch. It is merely a basis of comparison.

Mr. Mayer: I don't see the relevancy of it, of the doct ment, myself.

(139) Mr. Barton: Your Honor please, counsel has put in the record on direct actual sales, shares of market et cetera. I think we are on cross entitled to show the relevance, show the importance of that in terms of the past history of these other companies over a period of two years.

Hearing Examiner Hier: That may be all true, but I don't think you are entitled on cross-examination to put in speculation, which is, after all, what the projection is

Mr. Barton: It is speculation to the extent that it is based on actual figures for two years.

Hearing Examiner Hier: I know, but it is his prediction of what would occur if something else had not occurred.

Mr. Barton: I suggest that that goes to the weight rather than the admissibility of it. I think that goes to the weight.

Hearing Examiner Hier: I didn't say this exhibit is not admissible, but I am very doubtful as to whether it is admissible at this time. I don't think it is. You are necessarily offering speculation from one of your officials and on its face it is defensive, and your defenses here are affirmative, all three of them. They are affirmative defenses. There is always a negative defense.

Mr. Barton: So far as the injury to competition, it is certainly a part of the Government's case, and I suggest (140)—that this goes to that strongly, and I agree the weight of it is open to consideration by the Examiner.

Hearing Examiner Hier: I don't think you can put speculation in on cross-examination in this way. You may be able to do it on the basis of judgment and past experience when you get to your side of the case, but not now. I think the exhibit is premature and consequently, Mrs. Wick, Respondent's Exhibit 20 is rejected as premature.

(The document referred to, heretofore marked for identification Respondent's Exhibit 20, was rejected.)

Ba Mr. Barton:

- Q. Have you had prepared a tabulation of the total company barrels of each of the St. Louis breweries over the past ten years, 1944 through '54, which also gives St. Louis packaged sales of each of those breweries and the percentage of the St. Louis total?
 - A. Yes, sir, I have had.
- Q. That is, for the three breweries, Falstaff, Griesedieck Brothers and Griesedieck Western!
 - A. That has been done, sir.

Q. Is this a copy of that tabulation (handing document to witness)?

Hearing Examiner Hier: For what years, Mr. Barton Mr. Barton: '44 through '54, Your Honor.

A. That is correct.

(141) Mr. Barton: Please mark this.

Hearing Examiner Hier: Make that 21-A, -B and C.

(The document referred to was marked Respondent's Exhibit 21-A, -B and -C, for identification.)

Mr. Barton: I offer in evidence Exhibit 21-A, -B, and -C.

(142) Hearing Examiner Hier: Have you found anything subversive in this exhibit?

Mr. Mayer: No, sir, I have no objection.

Hearing Examiner Hier: All right. It is admitted in the record.

(The document referred to, heretofore marked for identification Respondent's Exhibit No. 21-A. B and -C, was received in evidence.)

Mr. Barton: I would like this document entitled "St. Louis and St. Louis County Draft Beer Sales, 1953, for Griesedieck Brothers and Griesedieck Western, and also 1954, marked for identification.

Hearing Examiner Hier: Exhibit 22-A and -B.

(The document referred to was marked Respondent's Exhibit No. 22-A and -B for identification.)

By Mr. Barton:

Q. Does Falstaff sell any draft beer in St. Louis?

A. Yes, sir.

Q. How about—I show you Exhibit 22-A and ask you what it represents, 22-A and -B.

A. These are tables showing draft beer sales in St. Louis and St. Louis County by Griesedieck Brothers and Griesedieck Western during the years 1953 and 1954, their total barrelage sales or share of the total industry sales in St. Louis and the percent of change from the previous year, and it also has the industry totals over on the right-hand side.

(143) Mr. Barton: I offer Respondent's Exhibit 22-A and -B in evidence (document handed to the Examiner).

Mr. Mayer: We have no objection, Mr. Examiner, to this document.

Hearing Examiner Hier: 22-A and -B are admitted.

(The documents referred to, heretofore marked for identification Respondent's Exhibit 22-A and -B, were received in evidence.)

Hearing Examiner Hier: Mr. Barton?

Mr. Barton: Yes, Your Honor.

Hearing Examiner Hier: I notice a minus sign in front of the per cent change per year. That does not mean that they went down 18 per cent, or anything like that, does it? There is just a dash there?

Mr. Barton: That means that they were that much down that month compared to the prior year. "P.R." is prior year.

Hearing Examiner Hier: All right.

Mr. Barton: I would like a document entitled "Budweiser 10-ounce and Busch Lager in St. Louis and St. Louis County compared to total Anheuser-Busch package beer for the six months January '55 through July '55," marked for identification.

(The document referred to was marked Respondent's Exhibit No. 23 for identification.)

(144) By Mr. Barton:

Q. I show you Exhibit 23 for identification, and ask you what it represents (handing document to with ...)

A. These are the sales of Budweiser 10-ounce at Busch Lager 12-ounce sales in the St. Louis and St. Louis County area as compared to the total Anheuser-Busch package beer sales or Budweiser package beer sales in the same area.

Mr. Barton: I offer Exhibit 23 into evidence.

(Document handed to the Examiner.)

Mr. Mayer: Mr. Examiner, I think that this document is obviously irrelevant. I don't think there was a mention made in the direct examination of 10-ounce packages or Busch Lager.

Hearing Examiner Hier: I think it is premature, Mr. Barton, and is rejected on that point.

Mr. Barton: Very good, Your Honor.

(The document heretofore marked Respondent's Exhibit No. 23 for identification was rejected.)

By Mr. Barton:

Q. Mr. Hallquist, referring to Commission's Exhibit 29-A which was put into evidence this morning. I note that on page 2—I guess it is 29-B as it was put into evidence—there is a paragraph in which—this was a letter from you to Mr. Barsi dated June 22, 1954—there is a paragraph in which you state:

(145) "There is also a problem of getting retailers to devote adequate cooling facilities for Budweiser and to reduce the cooling facilities now given to other brands. All of the salesmen have been thoroughly briefed both on trying to trade up orders to obtain adequate cooling space and to arrange for any number of deliveries per week that are necessary to keep retailers supplied."

Would you please explain what you are referring to in that paragraph by the problem?

A. Well, the basic problem is that because of the lesser sales of Budweiser in these outlets, the retailers have devoted only a certain amount of bin space, cooler space, for our particular brand. When their volume increased as substantially as it did, they would only have Budweiser on sale for a few hours and then while they were cooling an additional supply, consumers would have to do without, and one of the major problems was trying to get the retailer to realize that Budweiser should have in capacity at least equal to any other brand in the market.

Q. Now, you also state in this letter that:

"You no doubt have heard already that Schenberg Markets advertise Budweiser at \$2.29 per carton, which is 6 cents under our cost to the retailer,"—

A. That is correct.

(146) — "and that a neighboring outlet had advertised this same price on Tuesday evening. Steps had been taken to have those prices cease by the time the time limit of Wednesday evening expires."

What were you referring to in that paragraph?

A. Well, I referred to the steps being taken, and that is simply this, that we have no control over the merchandise after we sell it. However, we can go down to the retailer and appeal to his sense of loyalty, his fairness to us, so that it would not be sold under cost. In other words, we don't like it because it just fements a lot of trouble with the other retail dealers.

Now, this time limit, if memory serves me correctly, the retailer had advertised that his prices were good Monday and Tuesday, or something to that effect, so that he couldn't go back on his advertisement until the time limit had expired. However, at that time he agreed that he would at least sell at or above cost.

Mr. Barton: That is all.

Mr. Mayer: It will take as some time, if the Examiner pleases. I would like to go through all these does ments and check through them before I have any redirect.

Hearing Examiner Hier: How much time?

Mr. Mayer: Well, it will take me at least ten or fifteen minutes, I would say, to even start to do that.

(147) Hearing Examiner Hier: I am going to adjourn at ten minutes to five. Would you have time to do that?

Mr. Mayer: I would not have time to complete it, no. sir. I would like to have it go over until the first thing in the morning.

Hearing Examiner Hier: Is it convenient for you to be back here at 9 o'clock?

The Witness: Yes, sir.

Hearing Examiner Hier: All right, then.

Reluctantly we will adjourn until 9:00 o'clock temorrow morning.

(Whereupon, at 4:25 o'clock p. m., an adjournment was taken, to reconvene at 9:00 o'clock a. m., Wednesday, September 14, 1955.)

(148)

Wednesday, September 14, 1955.

Met, pursuant to adjournment, at 9:00 a.m. Before: Frank Hier, Hearing Examiner.

Appearances as before.

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(149)

PROCEEDINGS

Hearing Examiner Hier: Come to order.

Mr. Barton: Your Honor please, I have one further question I would like to ask the witness.

Hearing Examiner Hier: Go ahead.

JOHN HALLQUIST, JR., resumed the witness stand and testified further as follows:

Cross-examination—Resumed by Mr. Barton:

- Q. Mr. Hallquist, has there ever been a time in your experience in St. Louis when Budweiser draft beer was sold at any different price than Stag, Falstaff and the other St. Louis beers?
- A. Not to my knowledge. The standard price in St. Louis for many years has been 10 cents per glass. Over

the years glass sizes have been reduced. However, a retailers generally keep the same glass size.

Mr. Barton: That is all.

Hearing Examiner Hier: That is the consumer price.
What about the barrel or half barrel price!

The Witness: There has been a differential which has varied on draft beer. Now, going back -I can only go back within the last five or six years on that.

Bu Mr. Barton:

- (150) Q. What was the differential prior to June, 1954?
 - A. It was 45 cents.
 - Q. What was the price of a half barrel of Budweiser!
 - A. 812.45.
 - Q. And the price of the competing draft beer?
- A. I am not real sure about that. I would have to retresh my memory, Mr. Barton, whether it was—I think it was \$12.48 and \$12.
 - Q. And so the price of Bud was lowered?
 - A. Was lowered from \$12.48 to \$12.
 - Q. Which was the same price as competing beers!
 - A. The same price as competing beers.
- Q. But that didn't make any change in the price over the bar!
 - A. None whatsoever.

Mr. Barton: That is all.

Hearing "xaminer Hier: Redirect examination, Mr Mayer.

John Hollquist, Jr., for Commission Redirect

Robbiest's communition by Mr. Mam r:

- Q Mr. Hallquist, directing your attention to Respondut's Exhibit 3, sir, and starting on page 1 of that exhibit, which shows a listing by States, would you tell me, sir, the source of the figures which appear in that column! manning document to witness.)
- (151) Now, Mr. Hallquist, what are the source or sources of the figures which you got in Column 1 opposite the names of the States on Respondent's Exhibit 3?
- A. Well, this exhibit was prepared by our market research department. The information on industry sales, to the best of my knowledge, is gathered from various sources. For example, in most of the States, because of the excise taxes that are imposed, it is possible to get information from the States as to the total sales of all beers and also the total sales, and in many cases of individual brands.
 - Q. Is that, in fact, the way those figures were gotten?
 - A. To the best of my knowledge, sir.
- Q. Now, sir, I notice in the exhibit, at page 11 of Respondent's Exhibit 3, bearing the note "E Estimated package draft breakdown" appearing opposite several States on that tabulation. Would you tell us what that means, sir?
- A. Well, this was prepared by our market research department. The source of much of this material was United States Brewers Foundation. Now, some of it undoubtedly had to be estimated from sources that I don't know a thing about, and I think those are marked in such a manner, aren't they? Those with an "E" are probably estimated.
- Q. They are estimated by the Busch Company, is that right, sir?

A. I presume so.

John Hallquist, Jr., for Commission Reduced

(152) Q. And you do not know the basis on which they are estimated, is that correct?

A. No, sir. This was prepared by sour market research department.

- Q. Directing your attention, Mr. Hallquist, to Respondent's Exhibit 5-A, B and -C, and particularly to the not appearing on the first page on Exhibit 5-A. I notice the marking "V" appearing over several of the columns and the note "Verified by company." Now, which company verified those figures in those columns?
 - A. Anheuser-Busch.
 - Q. They were not verified by the company-
- A. Directly from the company above which the "V" appears. In other words, it is verified by Pabst, Schlitz, Schaefer, Ruppert, directly in correspondence to Anheuser-Busch.
- (153) Q. Now, sir, directing your attention to Respondent's Exhibit 18 and in particular fo the column under the heading of "Anheuser-Busch" headed "Percentage change previous year," would you tell me how the figures appearing in that column were arrived at!

A. Well, that would be the difference between one year and the other year divided by the previous year, the figure for the previous year.

For example—and I am not a statistician—but in January if the figure was 274,000 in 1955 and if in 1954 the January figure was 107,000 the difference between the two divided by the January 1954 figure would result in the plus 155 percent.

Q. That would be the difference in the statistical cases as you have them before you today?

A. That is correct.

John Hollquist, Jr., for Commission Redirect

- Q. And the fact it appears next to the column, the share column, it is not related to the market share column?
 - 1. No, sir, it is not.
- Q. Now, sir, would you tell me what you mean in this exhibit by "statistical cases"?
- A. A statistical case—in order to bring the various types of packages we have to a common denominator we would convert our 12 32-ounce case to a 24 12-ounce equivalent; we would convert a 48 12-ounce 8-6 pack to a 12 carton equivalent, to a 24 12-ounce equivalent, in order that we arrive at a figure—(154)—which is a true figure and not distorted.
- Q. And that was done, I take it, in relation to all the companies appearing thereon?
 - A. That is correct.
- Q. Mr. Hallquist, I believe you stated yesterday that the overall beer market was approximately 76 percent package and 24 percent draft sales throughout the nation. Is that correct?
 - A. That is approximately correct.
- Q. In the figure of draft sales were you including the consumption of package goods on premises?
- A. No, sir. I am talking about beer which is packaged either in barrels and half-barrels and quarter-barrels as distinguished from beer which is put into bottles and cans.
- Q. In the 76 percent figure of packages it is a fact, isn't it, that many of those would be sold in what would be termed an on-premise sale outlet?
 - A. That is true, sir.
- Q. Now, Mr. Hallquist, did any official of Anheuser-Busch ever intimate to you that there was a different reason for the price reduction in St. Louis and the St. Louis

John Hallquist, Jr., for Commission Reduced

County area other than a systematic plan to test of a observe your market share?

A. Except that we would like to have more business; the St. Louis and St. Louis County area.

Mr. Mayer: That, is alk I have, Mr. Examiner:

Mr. Barton: That is all.

(155) Hearing Examiner Hier: I have a few questions, Mr. Hallquist. I am not satisfied with this "premium" business. In this advertisement, Commission Exhibit 35, it says, "You can now enjoy Budweiser at ordinary beer prices. It still sells at premium prices around the world."

Now, I cannot line that up with what you testifed yesterday, that there is no such thing as a premium price. And I don't suppose you wrote this, but your company did!

The Witness: That is right—the advertising agency.

Hearing Examiner Hier: Do you have any explanation

The Witness: As to why it is in the ad?

. Hearing Examiner Hier: Yes.

The Witness: No, sir, except, as I did indicate yesterday, there are markets in the United States where Budweiser would be sold at slightly higher prices than the other beers. It was good, therefore, in my opinion, not to disturb the marketing position in those areas.

It was also an added sales stimulus insofar as the St. Louis market was concerned to indicate that people were getting a bargain by not having to pay a premium price. Now, in St. Louis, I presume you would say that there had previously been a premium price.

Hearing Examiner Hier: Has there ever been a time in your experience with any beer in the United States where you could not buy as a customer, as a consumer, a John Hallquist, Jr., tor Commission Redirect

cheaper beer than Budweiser was selling for in that particular city!

(156) The Witness: In that particular city you might find some outlets where you could and there would be other outlets where all the beer would be the same price.

For example, in Philadelphia, if I am not mistaken, before the price rise in 1953 there were more than 1,000 outlets which sold Budweiser and all other beers at the same price.

I can take you out into the State of Kansas today where you will find all beers at the same price over the bar regardless of what the brand name is. That is true in lowa and that is true in parts of Texas. I don't think there is a part of the country exempt from that. Chicago has one price over the bar in a countless number of outlets—and I am not talking about, particularly, high-priced outlets. For example, when you talk about the 1,000 outlets in Philadelphia, you got a pretty wide share of the market.

Hearing Examiner Hier: What you say is more true with on-premise sale than off-premise?

The Witness: That is true and in the off-premise outlets the variations, market by market and outlet by outlet within a market are tremendous. There is no possible way of generalizing and saying that there is this much differential er that much differential even within one city—it just doesn't occur.

(157) Hearing Examiner Hier: Do you have anything more?

Mr. Mayer: That is all.

Hearing Examiner Hier: Thank you, Mr. Hallquist.
(Witness excused.)

Charles A. Ens. Jr., for Commission Direct

Hearing Examiner Hier: Who is next?

Mr. Mayer: May we go off the record a minute.

Hearing Examiner Hier: Yes.

(Discussion off the record.)

Hearing Examiner Hier: On the record.

We will have a 15-minute break.

(Recess taken.)

Hearing Examiner Hier: On the record.

Mr. Mayer: Mr. Examiner, at this time we would be to call Mr. Ens.

CHARLES A. ENS, JR. was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination

Hearing Examiner Hier: Give the reporter your name and address.

The Witness: Charles A. Ens., Jr., 1920 Shenandoahthat is the business address—St. Louis 4.

By Mr. Mayer:

Q. Are you here today, Mr. Ens, in response to a subpoena?

(158) A. I am.

Q. And with what company are you associated, sir!

A. Griesedieck Brothers Brewery Company.

Q. And in what capacity are you associated with that company?

A. City sales manager.

Charles A. Ens. Jr., for Commission-Direct

Q. How long have you been associated with the company in that capacity!

A I have been associated seven years with the company, but the first six and a half years I was in the capacity of the package sales, just in the last six months I took over the complete on premise and off-premise.

Q. And were those package sales confined to St. Louis and the St. Louis County area?

A. That is right.

Q. And what type of business is the Griesedieck Brothers Company engaged in!

1. The distribution of GB Beer, solely the one brand.

Q. Is that the only brand name under which the beer products of Griesedieck Brothers is merchandised;

A. That is right.

Q. Mr. Ens., approximately what share of the company's overall business is done in the St. Louis area?

A. You have reference to this year, or on the average of the last few years?

(159) Q. The last few years.

A. Approximately 23, 24 percent.

Q. In what areas of the United States does the Griesedieck Brothers Company offer its beer for sale?

A. We go to eleven states—I will have to refer to some notes on that, because I am not familiar with all the states, its overall production—we go to Alabama, Arkansas, California, Illinois, Indiana, Iowa, Kansas, Kentucky, Mississippi, Missouri, Oklahoma, Tennessee and Texas.

Q. And with relation to the St. Louis area how are your beer products sold and distributed here?

A. It is a direct operation of the brewery, there is no distributorship. Is that what you have reference to?

Charles A. Ens., Jr., for Commission—Direct

- Q. Yes, sir.
- A. We have a direct operation of the brewery, main taining our own delivery service both in St. Louis and St Louis County.
- Q. Now, sir, in relationship to the position you hold with the Griesedieck Brothers Company, what are your duties as associated with that position?
- A. Well, it constitutes two or three phases. First year have your particular sales force with which you are in contact; secondly, you are out calling on trade, finding the different conditions of the field, basically to get yourself good locations for the sale of the product, merchandising (160) and displaying, seeing that you can get those points of advantage in each outlet.
- Q. How many salesmen do you have under your direct supervision?
 - A. Twenty.
 - Q. And do these salesmen report regularly to you!
- A. I contact them each day. They don't report in every day personally, they are in once or twice a week. But I talk to them every morning.
 - Q. By phone, I take it.
 - A. That is right.
- Q. As sales manager of the Griesedieck Brothers Company are you familiar with the market conditions at the retail level in the St. Louis Area?
 - A. I am.
- Q. And is it part of your job to be acquainted with the conditions affecting the retail market?
 - A. Yes, sir.
- Q. Now, in your experience with Griesedieck Brothers Company is there ordinarily a difference in price to the retailer between Budweiser and your product?

Charles A. Ens, Jr., for Commission-Direct

- A. There has always been a spread, to my knowledge, in the cost to the dealer.
- Q. And is Budweiser the produce which commands the higher price?
 - (161) A. Yes, sir.
- Q. Is this generally true with relation to all the market areas in which the Griesedieck Brothers products and Budweiser are in competition?
- A. To the best of my knowledge it is. I am not in the out-state business, but to the best of my knowledge there has always been that differential.
- Q. And is this true generally with relation to the prices paid by the consumer?
- A. I think that in most cases that has been passed on to the consumer where the consumer was paying a larger price for the other particular brand of beer.
- Q. Now, sir, are you familiar with the reduction in prices of Anheuser-Busch in the St. Louis market in January and in June of 1954?
 - A. There was a change in January and June.
- Q. And as a result of the June reduction did the price of Budweiser become the same for like packages as the packages offered by your company?
 - A. Yes, it did.
- Q. And did the price of Budweiser draft beer become the same as the draft beer price of Griesedieck Brothers?
 - A. That is right.
- (162) Q. Now, sir, inviting your attention to Respondent's Exhibit 18, if you will look at that, please, sir, and in particular to the months succeeding June of 1954, and in relation to the sales of your company as they are shown

Charles A. Ens, Jr., for Commission-Direct

thereon, to what do you attribute the sharp decrease is sales of your product?

- A. You have reference to June of '54?
- Q. Succeeding June of '54, the months succeeding June of '54.
- A. I would say a big factor is the drop in price with the Anheuser-Busch beer to ours at the same level, not only ours, but the other beers.
 - Q. Now, sir, what is the basis for that statement?
- A. Well, in contacting the particular trade outlets in the St. Louis market we were naturally quite perturbed and quite interested in seeing what this was doing and the main story passed on to us was that people did change their brand, going to the other beer which was selling for the same price as ours. In many cases they related that they stayed with the brand; in many cases they had changed and gone back after they had tried this particular brand of beer.

Hearing Examiner Hier: By this particular brand of beer, you mean Budweiser?

The Witness: That is the one that changed the price, yes, sir, Budweiser. These figures are approximately the same, I guess, as these I have.

(163) Mr. Mayer: The witness has stated, sir, that the figures appearing on the Anheuser-Busch exhibit are very close to and approximately the same as the figures which he gathered at my request concerning his own company's sales for that particular period.

By Mr. Mayer:

Q. Now, sir, directing your attention to Respondent's Exhibit 18 once again, and in particular to the sales figures

Charles A. Ens, Jr., for Commission-Cross

of your company as appearing thereon for the month of March, 1955, to what, sir, do you attribute the increase in sales of your product at that time?

- A. In March of 1955?
- Q. Yes, sir.
- A. The selling price of Anheuser-Busch went to a higher bracket, and as I stated a few moments ago, many of the dealers and consumers which we had contacted stated that they were going back to their old brands due to this added cost of Budweiser.

Mr. Mayer: All right, sir. That is all we have, Mr. Examiner, of Mr. Ens.

Cross-cramination by Mr. Barton:

- Q. Mr. Ens, I believe you said that your duties with Griesedieck Brothers had been exclusively in St. Louis since you have been with the company the last seven years?
 - (164) A. St. Louis and St. Louis County.
 - Q. St. Louis and St. Louis County?
 - A. Yes, sir.

Mr. Barton: Would you mark this as an exhibit for identification, please?

Hearing Examiner Hier: That will be 24, Mrs. Wick.

(The document referred to was marked Respondent's Exhibit 24-A, and -B for identification.)

Mr. Barton: This is a letter dated June 21, 1944.

By Mr. Barton:

Q. I show you Respondent's Exhibit 24-A and -B for identification. Will you please tell us what that is (handing document to witness)? Please tell us what it is.

Charles A. Ens. Jr., for Commission-Cross

A Yes, I think this was a letter that Mr. Ed Griesdieck, who is since deceased, sent out at the time that the Anhenser-Busch changed their prices, that we were not going to increase our prices. I think that was the letter at the time.

Hearing Examiner Hier: Was that a letter to the trade?

The Witness: "To my GB co-workers," yes.

Ba Mr. Barton:

Q. In other words, that letter went to employees and to the distriouters, is that it?

A. To the distributors, I can't say.

(165) Q. It went to the employees?

A. To the employees, I know.

Mr. Barton: Your Honor, I offer in evidence 24 A and B for identification (handing document to counsel)

Mr. Mayer: I have no objection.

Heaving Examiner Hier: Admitted.

(The document referred to, heretofore markefor identification Respondent's Exhibit 24-A amb B was received in evidence.)

Ba Mr. Barton:

- Q. Mr. Ens, this letter, 24-A and -B, went to all retailers in St. Louis at the same time, did it not?
 - A. Not that letter that I know of.
 - Q. You can't say that it didn't?
- A. No. That letter was sent to the employees, in the co-workers, the one that you showed me.

Charles A. Ens. Jr., for Commission Cross

- Q. Were excerpts of it sent to the trade, to the retailers in St. Louis and St. Louis County!
 - A. That I couldn't say offhand.
 - Q. You don't know?
- A. To the best of my knowledge it wasn't, because I think that statement was made at the time to the press, and it was an open book.
 - Q. I see.
- A. I am not sure of that, but to the best of my knowledge. (166)—that is the way that that was done.
- Q. In other words, that this was put in the press, the contents, the general substance of it appeared in the press
- A. No, I didn't say that. I said that the statement that was made by Mr. Griesedieck that we weren't going to raise the price of our beer or change the price of our beer at that time, this whole thing was not in the press to the best of my knowledge.
- Q. All right. Do you know what percentage of your total production is devoted to package sales in St. Louis and St. Louis County?
- A. I think I might have it here treferring to asset ments).
- Q. Yes. Let me show you Respondent's Exhibit 21 x and B and the figures for Griesedieck Brothers, and ask you whether you have any comment on the percentages of that page?
- A. Well, the only figures that I have that I might be ble to comment on are '53 and '54 as far as this total parrelage. You have a barrelage listed here in 1953 of 778,142 barrels.

Charles A. Ens. Jr., for Commission Cross

A. I have 776,932, which is approximately correct, and you have 656,000 for '54 and I have 643,000. That is relatively the same.

Q. In other words, that could depend on when they shipped at the end of the year!

A. That could be, because we break everything down in cases (167) to barrels, regardless of whether they are quarts or cans.

Q. That is on the basis of 13.77?

A. 13.77, that is right. You have a percentage in here of 17.21 for '53. For '53 I have a percentage of 23.4.

Q. That is all beer, though, isn't it?

A. That is draft and packaged combined for the entire operation.

Q. That is packaged beer?

A. Tms is packaged.

Q. You don't have any figure on that?

A. I have no breakdown on that, no, sir. I might be able to give you that by month, but I can't give it to you by the year. I can give it to you by the month of those particular years. You have this broken down by the year.

(168) Q. That is broken down by the-

A. I am giving you each month of the year but I can't give by the year.

Q. Are these figures based on the 23 percent that you have for total?

A. The barrelage is approximately the same.

Q. That is, the figures we have used are approximately correct!

A. I would say so.

Mr. Barton: That is all.

Hearing Examiner Hier: Do you have anything more

Charles A. Ens. Jr. tor Commission Cross

Mr. Mayer: Nothing more.

Hearing Examiner Hier: Well, I do. Mr. Ens, it I understood you correctly, and you correct me if I am arong, in the spring and summer of 1954 you lost sales and you attribute that in part to the cut in price in Bud wesser beer; and in March 1955 and the succeeding time, you said, your sales have increased and you attribute that in part to the increase in March 1955 of Budweiser beer back to the figure, to the same level it had previously sold at.

What I am interested in finding out is this: Did you regain the customers you say you had lost or did that in crease come from new customers—or what was the situation!

The Witness: I would say that we regained some or the greater portion of the drinkers that we had lost and also some from other branches.

(169) Hearing Examiner Hier: I see. Could you give me a rough estimate of the proportion that you regained? We will say, for example, that you lost—

The Witness: Well, I might say that our business, if I might refer to the figures—in February 1955 we hit an all-time low which was 4.8 percent of the business and in March we jumped right back up to 8.7 percent which was comparable to the figure which we had even in August of 1954. So, we came back to approximately the same level.

Hearing Examiner Hier: What did you lose? Can you give me a rough estimate of the proportion that you lost that you regained and what proportion you gained of new customers?

Would you say that 75 percent of the customers you lost came back?

The Witness: It would be hard to say percentagewise, I will say this, that—I will say between 50 to—well, 50 or 60, possibly 75 percent we could have gotten back.

Hearing Examiner Hier: Anything more!

Mr. Barton: No, your Honor.

Mr. Mayer: Nothing.

Hearing Examiner Hier: Thank you very much for coming down.

(Witness excused.)

Mr. Mayer: May we have a few moments again!

Hearing Examiner Hier: All right.

(A recess was taken.)

(170) Hearing Examiner Hier: On the record.

Mr. Mayer: Mr. Meurer, would you take the standplease.

HEROLD C. MEURER was thereupon called as a winness for the Commission and, having been first duly swers, testified as follows:

Direct Examination

Hearing Examiner Hier: Will you give the reporter's your full name and address.

The Witness: Herold C. Meurer, Graeser Road, Roub. 1, Creve Coeur.

By Mr. Mayer:

- Q. And what is your business address?
- A. 3615 Forest Park.
- Q. Are you here today, sir, in response to a subpoena

- A. Yes, sir.
- Q. With what company are you associated?
- A. Falstaff Brewing Corporation.
- Q. And how long have you been associated with that company?
 - A. Twenty-one years.
- Q. In what capacity are you presently employed by the company?
 - A. City of St. Louis sales manager.
 - Q. Did you hold that position in 1954, sir?
 - A. Yes, sir.
- (171) Q. And what were your duties, or what are your duties as sales manager for the corporation in this area?
- A. Supervising and training salesmen, indirectly in charge of all deliveries, and making regular retail contacts with salesmen or by myself.
- Q. And do you have salesmen working under your supervision?
 - A. Yes, sir.
 - Q. About how many in this area?
 - A. Seventeen.
 - Q. Do they report to you as a matter of course?
 - A. Yes, sir.
 - Q. Do you personally make calls on retail accounts?
 - A. Yes, sir.
- Q. Have you been doing this with regularity since you have been sales manager of the company?
- A. Yes—I wouldn't say that I establish myself on a route just like a salesman, but I periodically make retail calls.
- Q. Under what brand name is the beer product of your company sold?

- A. Falstaff.
- Q. And approximately what share of the company's overall business is done in the St. Louis area?
 - A. At the present time I believe about 14 percent.
 - Q. In what general areas is Falstaff offered for sale!
- (172) A. Well, it is rather spread out. I would say the western coast—no, that would be just in California, the northern part of California, and through the West, Midwest, South and Southeast, and central, probably—it covers about 26 states.
 - Q. And in the St. Louis and St. Louis County area how is Falstaff sold and distributed?
 - A. Directly from the Brewery.
 - Q. Tot the retail accounts?
 - A. To the retailer.
 - Q. Now, as sales manager of the company are you familiar with the market conditions at the retail level in St. Louis?
 - A. I think I am, yes.
 - Q. And is it part of your job to be acquainted with the conditions affecting the retail market?
 - A. Right.
 - Q. Now, sir, is there ordinarily a difference in the price to the retailer between Budweiser and Falstaff!
 - A. Yes, sir.
 - Q. And is Budweiser the beer which commands the higher price?
 - A. Yes, sir.
- Q. And is that generally true with relation to the market areas in which your product and Budweiser are in competition?

- A. As far as I know, yes, sir.
- (173) Q. And is this true generally with relation to the prices paid by the consumer?
 - A. I would say so.
- Q. Now, sir, are you familiar with the reduction in price of Budweiser in January and June of 1954?
 - A. Yes, sir: I am.
- Q. And as a result of the June reduction in price did the price of Budweiser become the same for like packages as the price offered by Falstaff?
 - A. Yes, they did.
- (174) Q. Now, sir, inviting your attention to Respondent's Exhibit 18 and in particular to the figures showing the package sales of the Falstaff Company for the years of 1954 and 1955, particularly, sir, with regard to the months succeeding June of 1954, to what do you attribute the sudden minus percentages when your sales are contrasted to your sales of the previous year?
- A. Well, I would say the drop in price of Budweiser to the price of the other beers, of the popular priced beers, at the time.
 - Q. What is the basis of that statement, sir?
- A. Well, our sales, we had a sales trend which showed a definite increase in sales up to that time, and then at the time of the lowering of the price by Budweiser we started to show a decrease in sales. Now, naturally we were concerned and on investigation in the trade we find that a lot of our customers had more or less sampled or wanted to sample Budweiser at a popular price, and in that way we did lose a number of consumers.

Q. Now, sir, do you in the conduct of your office, sir, as sales manager, make sales forecasts with respect to expected business by Falstaff in the St. Louis area!

A. Yes, sir. That is-

Mr. Baker: Your Honor, we object to anything brought in with reference to forecasts. We offered evidence (175) along that line yesterday and it was rejected as being untrustworthy.

Mr. Mayer: The question is "Do you make".

Hearing Examiner Hier: I didn't reject it as being untrustworthy, Mr. Baker. I rejected it as being prematurand without the scope of the direct examination.

You may answer.

A. Yes, we do. All salesmanagers in our organization do project sales.

By Mr. Mayer:

- Q. Now, sir, at my request have you brought your sales projection for the year of 1954?
 - A. Yes.
 - Q. May I have it please, sir?
 - A. Yes (handing document to counsel).

Mr. Mayer: Mr. Examiner, at this time I should like to have marked as Commission's Exhibit for identification 67 a document headed "1954 Retail Sales Estimate."

(The document referred to was marked Commission's Exhibit 67 for identification.)

Hearing Examiner Hier: When was that forecast made, Mr. Meurer?

The Witness: That was made in, I believe, October of the early part of November of '53,

Ba Mr. Mayer:

(176) Q. I believe in response to the Examiner's question, sir, you stated that this forecast was made in October or November of 1953?

A. 53, yes, sir. That is when we set it up for the ensuing year.

Q. Are these forecasts made annually in the regular course of your basiness?

A. Yes, sir.

Mr. Mayer: Mr. Examiner, I offer into evidence Commission's Exhibit for identification 67.

Mr. Baker: We have no objection, Your Honor.

Hearing Examiner Hier: No objection?

Mr. Baker: No. sir.

Hearing Examiner Hier: Admitted.

(The document referred to, heretofore marked for identification Commission's Exhibit 67, was received in evidence.)

Ba Mr. Mager:

- Q. Now, sir, again inviting your attent. to Respondent's Exhibit 19—I am sorry—Respondent's Exhibit 18, and particularly to your company's sales as reflected for the months succeeding March of 1955, to what do you attribute, sir, the sudden plus figures which appear in the column of your sales when they are contrasted with the previous year's sales?
- (177) Λ. Well, I believe with a normalcy in pricing again we have more or less continued on with the trend that had been established prior to the decrease in Budweiser's price of '54, and we assumed that trend again.

Q. Now, sir, have you familiarized yourself at my request with Valstaff's sales in nearby areas to the St. Louis market for 1954?

A. Yes, sir. At your request I got some information on the markets immediately surrounding St. Louis, that is, distributing points which would be in the adjacent markets.

Q. Now, sir, in those areas was there a differential in price existing between Budweiser and Falstaff at the dealer price during the year 1954?

A. Yes, sir, I am sure there was,

Q. In those areas in which Falstaff—in those areas we are speaking of generally in this area surrounding this area—and while Falstaff's market was decreasing here, when the differential was eliminated did Falstaff maintain its market position in those areas?

A. Yes, sir, and they maintained their market position and in some cases increased sales.

Mr. Mayer: That is all we have, Mr. Examiner.

Hearing Examiner Hier: I would like to ask you that I don't know whether your experience qualities out to answer, or maybe there isn't any answer. Is there any thing (178) reliable that I can go on to indicate what percentage of consumers are shifters, that is, who buy been solely on a price basis without regard to brand or any vertising or TV or any of the rest of the sales efforts!

The Witness: I think that would be the \$64,000 gretion. I think we would give that to find out.

Hearing Examiner Hier: All right. Go ahead, W. Baker.

(179) Cross-examination by Mr. Baker:

- Q. Mr. Meurer, you have been with Falstaff Brewing Corporation for 21 years, is that correct?
 - A. Yes, sir.
 - Q. And have been city sales manager for how long?
 - A. Fifteen.
- Q. Now, just to identify the Falstaff Brewing Corporation a little more in the record, that company was established about 1921, was it not?
- A. I wouldn't even know to say "about", frankly. I should but I don't.
- Q. When you first went to work with Falstaff Brewing Corporation, how many breweries did they have!
- A. They had three, I believe; two in St. Louis and one in Omaha
 - Q. Two in St. Louis and one in Omaha?
 - A. Yes.
 - Q. Currently how many do they have?
 - · A. Six actual breweries in production.
- Q. After you came with Falstaff, they acquired then three additional breweries. Do those go by plant numbers?
 - A. Yes, Plant 1, 2 and so on.
- Q. They had Plants 1, 2 and 3 when you joined the organization?
 - (180) A. Yes, sir.
 - Q. Now with respect to Plant 4, where is that located?
 - A. That is New Orleans.
- Q. Could you tell me approximately when Falstaff acquired that brewery?
- A. I would say somewhere around '35 or '6: I am not 100 well acquainted with that.

- Q. That was acquired from the National Brewing Company?
 - A. I believe so, of New Orleans.
 - Q. Where is Plant 5 located?
 - A. That is the Columbia Brewery in St. Louis.
 - Q. That is in St. Louis?
 - A. The former Columbia Brewery.
 - Q. When was that plant acquired, Mr. Meurer?
 - A. I believe that was in '45 or '6.
- Q. At that time the Columbia Brewing Company was marketing beer in the St. Louis market, was it not!
 - A. Yes.
 - Q. In fact, that was Alpen Brau?
 - A. Yes.
- Q. Alpen Brau had been one of the top sellers in this market prior to its acquisition by Falstaff?
- A. That is right. Not just prior to the acquisition.
- Q. Some time prior. And in 1940 they were the leading
- (181) seller in this market, were they not, so far as share of the St. Louis market?
 - A. Alpen Brau?
 - Q. Yes, sir.
 - A. Yes, I believe they were.
- Q. Now, after Falstaff acquired Columbia, you dropped the Alpen Brau brand, did you not?
 - A. Yes, sir.
 - Q. You said it was acquired around '46?
 - A. I believe it was in '46, yes, sir.
- Q. In that year Falstaff was right near the top in the St. Louis market as far as share of the market was educated, was it not?
 - A. I believe it was.

- Q. You and Alpen Brau were the two leaders?
- A. I believe they were.
- Q. Where is Plant 6 located, Mr. Meurer?
- A. That is San Jose, California.
- Q. Do you recall when that was acquired?
- A. I think that was about three years ago, if I am not mistaken, either '51 or '52.
 - Q. And that was acquired from Pacific Brewery?
- A. Wieland I think was the name, W-i-e-l-a-n-d, I believe.
- Q. That was a going concern, was it not, when it was purchased?
 - A. I believe so; I am not too familiar with it, though.
- (182) Q. A number of these breweries that you have acquired added capacities, have they not?
 - A. I believe that is correct.
 - Q. Where is Plant 7 located?
 - A. That is Ft. Wayne, Indiana.
 - Q. When was that acquired, Mr. Meurer?
- A. I believe that was leased the first—the first part of last year.
 - Q. And you have an option to purchase, do you?
 - A. I believe so.
 - Q. That was the Berghoff Brewing Company?
 - A. Yes, sir.
- Q. And that was a going concern and marketing beer at that time?
 - A. Yes, I believe it was,
- Q. Do you have any idea what Berghoff's sales were at that time?
 - A. No. sir, none whatever,
- Q. You have undertaken considerable expansion at this Plant 7 that was acquired from Berghoff, have you not?

A. I haven't been advised-I mean, I wouldn't know.

Mr. Baker: Your Honor, I would like to have marked for identification as Respondent's Exhibit 25 the annual report of the Falstaff Brewing Corporation for the year 1946.

(The document referred to was marked Respondent's Exhibit 25 for identification.)

(183) Mr. Baker: And marked for identification as Respondent's Exhibit 26 the annual report of the same company for 1947.

(The document referred to was marked Respondent's Exhibit 26 for identification.)

Mr. Baker: And as Respondent's Exhibit 27 the annual report of the same company for 1948.

(The document referred to was marked Respondent's Exhibit 27 for identification.)

Mr. Baker: And as Respondent's Exhibit 28 the annual report of the same company for 1950.

(The document referred to was marked Respondent's Exhibit 28 for identification.)

Mr. Baker: And as Exhibit 29 the report for 1951.

(The document referred to was marked Respondent's Exhibit 29 for identification.)

Mr. Baker: And as 30 the report of the same company for 1952.

> (The document referred to was marked Respect ent's Exhibit 30 for identification.)

Mr. Baker: And as 31 the report for the same company for 1953.

(The document referred to was marked Respondent's Exhibit 31 for identification.)

Mr. Baker: And as 32 the 1954 report of the same company.

(184) (The document referred to was marked Respondent's Exhibit 32 for identification.)

Mr. Baker: And as Respondent's Exhibit 33 the quarterly report of the Falstaff Brewing Corporation for the quarter ending March 31, 1954.

(The document referred to was marked Respondent's Exhibit 33 for identification.)

Mr. Baker: And as 34 the quarterly report ending June 30, 1954.

(The document referred to was marked Respondent's Exhibit 34 for identification.)

Mr. Baker: And as 35 the quarterly report ending September 30, 1954.

(The document referred to was marked Respondent's Exhibit 35 for identification.)

Mr. Baker: And as 36 the quarterly report ending March 31, 1955.

(The document referred to was marked Respondent's Exhibit 36 for identification.)

Mr. Baker: And as 37 the quarterly report ending June 30, 1955.

(The document referred to was marked Respondent's Exhibit 37 for identification.)

Bu Mr. Buker:

Q. Mr. Meurer, the only report we are missing here is the 1949 annual report. I wonder if you will supply that to us. (185) please.

A. I will ask management - '49!

Q. Yes.

1. Yes.

Hearing Examiner Hier: You are also missing the quarterly report for December 1954, if I have my notes correct.

Mr. Baker: That is the annual report.

Hearing Examiner Hier: Oh, that is the annual report. All right.

Mr. Baker: We offer these, your Honor.

Hearing Examiner Hier: First of all, I might ask what is the purpose of offering reports prior to 1950, such as 1947, 1948, 1949.

Mr. Baker: It identifies this company, shows the growth of this company, the business operations.

Hearing Examiner Hier: Well, those years are not in question. I do not see the point in encumbering the record with these particular reports. At any rate, Mr. Mayer, do you have objection?

Mr. Mayer: I do not see any relevance at this time. I don't recall—I don't see how they are pertinent at all to the examination of this witness today; and, frankly, I don't see how they pertain actually to any defense of this company—but they may correct that at a later time.

Mr. Baker: If I might say, your Honor, this witness testified about the growth of this company and that as the (186)—result of price cuts by Anheuser-Busch that growth was stopped and, certainly, in response to that, we have—

Hearing Examiner Hier: Let us get that cleared up right now. I did not understand him to say that the growth of the corporation was stopped. I understood him to say that there was a decided interruption in the sales trend at St. Louis—

Mr. Mayer: This witness did not testify about the overall growth of this company or overall size of this company.

Hearing Examiner Hier: Nevertheless, Mr. Mayer, these reports are relevant to the issues set if they show and I haven't seen them—if they show that the company was doing all right profitwise during the years 1954 and 1955. That would of course tend to some extent to negate from the loss of sales—I am well aware of the answer you are going to make, namely, that you can lose sales and still make it up some other way—

Mr. Mayer: These reports are unconnected, probably—I haven't even looked at them—with the specific business this man testified about in this area, there will be no connection between that and the testimony this witness gave this morning.

Hearing Examiner Hier: But that doesn't make this witness incompetent; it makes the offer rather useless—

Mr. Mayer: Yes, sir-it makes it irrelevant.

Hearing Examiner Hier: I think you are right—I think it is relevant to some degree. It is a matter of weight: (187) but I don't see the relevancy of 1946, 1947, 1948, 1949 or even 1950. Taking the 1952 annual

report, you get a very fair idea of the Falstaff financial and commercial strength, and starting from there you go to 1953 and 1954—

Mr. Baker: We will withdraw everything before 1950. Hearing Examiner Hier: I will mark them as withdrawn. Mr. Reporter, show as withdrawn Respondent's Exhibits 25, 26 and 27.

(The documents referred to, heretofore marked Respondent's Exhibits 25, 26 and 27 for identification, were withdrawn.)

Hearing Examiner Hier: You would like to keep 1950? Mr. Baker: We would like to keep 1950.

Hearing Examiner Hier: All right. Mr. Meurer, you are relieved from getting any 1949 reports, then, accordingly.

The Witness: Thank you.

Hearing Examiner Hier: Mr. Baker offers in evidence Exhibits 28 through 37 to which counsel for the Government objects; and I am overruling the objection and admitting those exhibits into evidence for such general relevance as I think they have.

(The documents referred to, heretofore marked Respondent's Exhibits 28, 29, 30, 31, 32, 33, 34, 35, 26 and 37 for identification, were received in evidence.)

Hearing Examiner Hier: Understand, now, gentlemen—I am talking to respondents—that a company can lose sales (188) particularly in an area and still make money. I mean, this is not the final answer to the situation, in my mind. Go ahead.



Mr. Baker: Your Honor, I would like to have marked as Respondent's Exhibit 38 a letter signed by Joseph Griesedieck, "To all drivers and city sales personnel, City of St. Louis," dated July 7, 1954.

(The document referred to was marked Respondent's Exhibit 38 for identification.)

Bu Mr. Baker:

Q. I ask you, Mr. Meurer, if you are familiar with that letter.

A. Yes.

Hearing Examiner Hier: Who is Joseph Griesedieck?

The Witness: President.

Hearing Examiner Hier: Of Falstaff?

The Witness: Yes, sir.

Hearing Examiner Hier: Well, now, what is the connection between Falstaff and Griesedieck Brothers Brewing Company?

The Witness: There is no connection in the brewing -in the business.

Hearing Examiner Hier: They are just brothers?

The Witness: No. No, there is no—they are—(laughs)—the president of our brewery is a cousin to the president of the Griesedieck Brothers brewery.

Hearing Examiner Hier: No other connection?

(189) The Witness: No.

Mr. Mayer: Has this been offered?

Mr. Baker: No. I was just about to offer it. I offer it.

Hearing Examiner Hier: Do you object?

Mr. Mayer: Well, there is certainly no relevance to the last paragraph in that letter being talked about; but I have no objection to the admission of the document.

(190) Hearing Examiner Hier: Well, I don't see anything that hurts or helps in this last paragraph, and rather than excise it it is admitted in evidence, Respondent's Exhibit 38.

(The document referred to, heretofore marked Respondent's Exhibit 38 for identification, was received in evidence.)

By Mr. Baker:

- Q. Mr. Meurer, I show you Respondent's Exhibit is, and I ask you to look at the Falstaff figures for February, 1955.
 - A. Yes. sir.
- Q. Now, that shows a 32 percent increase over February of the previous year, does it not?
 - A. Yes, sir.
- Q. So your trend started really in February rather than March or April, did it not?
- A. Well, the upward trend in February wasn't a normal up trend, because of the announcement of a price raise on the first of March.
- Q. There was no announcement in February, in February the Anheuser-Busch price was the same as yours, was it not?
- A. The price was the same, but the announcement of a price increase.

Hearing Examiner Hier: It came out when?

The Witness: As I recall, Anheuser Busch' cannot (191) out about three weeks prior to the first of March.

Bu Mr. Baker:

- Q. What position were you in the St. Louis market in 1953, Mr. Meurer?
 - A. In 1953?
 - Q. Yes.
 - A. Second, I think.
 - Q. What are you today?
 - A. First.
 - Q. What position were you nationally last year?
- A. Well, according to the records released that I saw, I believe we were fifth.
- Q. It is my understanding from the figures that are in this record now that at the current rate of sales there is a very good probability that Falstaff will end up third or fourth nationally this year. Would you agree with that?

Mr. Mayer: Objection. May the witness be shown the figures that he is referring to before he makes any conclusion with regard to the figures?

Hearing Examiner Hier: To you need the figures to answer the question, or are you familiar enough without them?

The Witness: I don't have any idea of the figures, sir. Hearing Examiner Hier: If he doesn't have any (192) idea of the figures, Mr. Baker, obviously he can't answer the question.

Mr. Baker: We will withdraw the question.

That is all.

Hearing Examiner Hier: Mr. Meurer, I am going to ask you the same question I asked Mr. Ens. When your sales went back up in 1955, after Anheuser-Busch increased its sales price to retailers, could you give me an approxi-

mation of what percentage of that recapturing was old customers who had deserted you during the price cut and what percentage was new business, coming from other brands? Just a rough estimate, I know you don't have accurate figures.

The Witness: I was going to say, if we take the increase in sales that we showed I would say we got back a big majority. Percentagewise it would be a little hard to say, but I would say we probably ran a little higher, around 70 percent or so, just to assume that.

Hearing Examiner Hier: Now one other question I want to ask you. Neither side asked you or Mr. Ens this question, and it slipped my mind when he was on the stand. The record here shows that on the fourth of January, 1954 there was a price cut by Budweiser for the 24 12-ounce retail regular case from \$2.93 to \$2.68. Did that have any effect on your sales?

A. No, I can't honestly say that it did have.

(193) Hearing Examiner Hier: It is just the June price cut that had an effect on your sales?

The Witness: Yes, sir.

Hearing Examiner Hier: Then I am warranted in assuming, I figure, that the differential between \$2.68 and \$2.39, which was the June cut, namely, 33 cents, represents the limit outside the danger area to your sales, according to your testimony.

The Witness: I would say so, yes.

Hearing Examiner Hier: All right.

Any more questions, gentlemen?

Mr. Baker: I have one question, your Honor.

By Mr. Baker:

- Q. The total beer sold in the St. Louis market in the last three or four years has not changed appreciably, has it! If you lump all competitors selling in the market, their total sales—
 - A. It has been pretty stable, I would say, yes.
- Q. And you now have a greater share of that market than you had in 1953?
 - A. Yes, sir.

Mr. Baker: That is all.

Mr. Mayer: I have no further questions.

Hearing Examiner Hier: Well, I have one again.

Can you think of any other factor in your company's (194) operations or the operations of any competitor other than this price cut which would account for your sales drop after June of 1954?

The Witness: In this immediate market?

Hearing Examiner Hier: Yes, in this immediate market.

The Witness: No, sir; I cannot.

Hearing Examiner Hier: Did the quality of your produce remain the same?

The Witness: Yes, it did.

Hearing Examiner Hier: Anything more, gentlemen?

Mr. Baker: That is all.

Hearing Examiner Hier: Thank you, Mr. Meurer.

(Witness excused.)

Mr. Mayer: May we go off the record, sir?

Hearing Examiner Hier: Yes.

(Discussion off the record.)

Hearing Examiner Hier: On the record.

Henry G. Sewing, Jr., tor Commission Days

We will adjourn until 2 o'clock.

(Whereupon, at 11:00 o'clock a.m. a recess was taken until 2:00 p.m. of the same day.)

(195)

AFTERNOON SESSION

- 1 2:00 In F

Hearing Examiner Hier: The hearing will come to order.

Mr. Mayer: Mr. Examiner, we would like to call Mr. Sewing.

Hearing Examiner Hier: Mr. Sewing.

HENRY G. SEWING, JR., was called as a witness for the Commission and, being first duly sworn, testified as follows:

Direct evamination by Mr. Mayer:

- Q. Mr. Sewing, will you state your name and business address?
 - A. Henry G. Sewing, Jr., 3607 North Florrisant Street,
 - Q. And are you here today in response to a subpostal
 - A. Yes, sir.
 - Q. With what company are you associated, six?
 - A. Carling Brewing Company.
- Q. Were you associated with any other compare or a to this?
 - A. Yes, sir. Griesedieck Western Brewing Company

Henry G. Sewing, Jr., for Commission - Direct

Q. How long have you been employed by the combined tiple-edicek Western Company and the Carling Company?

A. Since November, 1948, when the Griesedieck Western Company (196) procured their merge with the Hyde Park Brewing Company.

Hearing Examiner Hier: Keep your voice up, so counsel can hear you.

Ba Mr. Mamer:

- Q In what capacity are you presently employed by the Carling Company, sir?
- A. As sales and merchandising manager of the St. Louis and Belleville Branches.
- Q. Did you hold a similar position with the Griesedieck Western Company?
 - A. Yes, sir.
- Q. How long have you held that position with the tiresedieck Western Company?
 - A. Since January, 1953.
- Q. Under what brand name or names were the beer products of the Griesedieck Western Company sold in the St. Louis areas?
- A. Under the brand names of Hyde Park 75 and Steelbeer,
- Q. What were your duties, sir, for the Griesedieck Western Company in 1953 and 1954?
- A. As sales and merchandising manager of the St. Louis and Belleville areas.
 - Q. And just what did that entail, sir?
- A. Well, it entails the supervision of both on and off bremise salesmen, merchandising men, the responsibility of (197)—the merchandise in those two markets.

Henry G. Sewing, Jr., for Commission-Direct

- Q. How many salesmen did you have under your signs vision in 1954, sir?
 - A. Sixteen men, with three supervisors in the key mass
- Q. Did the salesmen report to you as a regular sumps of their business duties?
 - A. Yes, sir.
- Q. Did you make calls personally on your own to an our retail accounts in this area?
 - A. Yes, sir.
- Q. As a salesmanager are you familiar with the market conditions at the retail level in the St. Louis area!
 - A. Yes, sir.
- Q. Is it part of your job to be acquainted with the conditions affecting the retail markets?
 - A. Yes, sir.
- Q. Now, sir, are you acquainted with the fact that Anheuser-Busch reduced its price in January, 1954, and again in June of 1954 in the St. Louis and St. Louis County area?
 - A. Yes, sir.
- Q. And as a result of the June reduction in price of Budweiser did the price of Budweiser become the same for like packages as the beer products offered by your company!
 - A. Yes, sir.
- Q. Now; sir, in the sale of 3.2 or 5 per cent beer in the (198)—St. Louis area, is the price the same for both beets!
 - A. Yes, sir.
- Q. And is that true of all brands within the St. Louis area?
- 4.A. Yes, sir.
- Q. Inviting your attention to Respondent's Exhibit Is and in particular for the sales attributed thereon to the Griesedieck Western Company, I wish you would study

Henry G. Sewing, Jr., for Commission-Direct

that, sir, with relation to the sales as they appear thereon for the year of 1945 and the months disclosed on the exhibit for 1954, and for the months disclosed on the exhibit in 1955. Now, sir, calling your attention specifically to the months listed for your company's sales in 1954, the months succeeding June of 1954, to what do you attribute the sharp decrease in sales of your product?

A. Well, the major portion or the basic part of it the ut of price on the Budweiser merchandise, making it a popular price.

Hearing Examiner Hier: What was the rest of it?

The Witness: What was the rest of it, you say?

Hearing Examiner Hier: You say the major part. Was there any other cause and if so, what was it?

The Witness: Well, basically, sir, I say that because there is a slight trend of decrease here, the reason of which I don't know.

Hearing Examiner Hier: Your testimony is that (199) any acceleration of that downward trend as shown by those figures on Respondent's Exhibit 18 is, in your opinion, due to the fact that Budweiser dropped its price to retailers to the same as you were charging, is that right?

The Witness: Yes, sir.

Ba Mr. Mayer:

- Q. Now, Mr. Sewing, what is the basis for that state ment!
- A. Well, basically the reports that were brought in to me by the men working in the field, the reports of consumers or retailers in their explanation as to why their sales had dropped off.

Hearing Examiner Hier: Who does he sell to?

Henry G. Sewing, Jr., for Commission-Direct

Mr. Mayer: Direct to retailers. We will ask that question.

By Mr. Mayer:

Q. In distributing your products in St. Louis and S. Louis County area, what type of distribution do you us

A. Well, we use direct distribution in all of 8% Logs and approximately between 40 and 50 per cent of the county, but there are also three wholesalers that distribute our products in the county.

Q. In relation to the statement you just made a moment ago, then it would be as a result of the comments of the direct retailers to whom you sold in the St. Louis and St. Louis County area?

(200) A. Yes, sir.

Mr. Mayer: That is all we have, Mr. Examiner, of Mr. Sewing.

Hearing Examiner Hier: Cross-examine.

(201) Hearing Examiner Hier: While they are conferring, Mr. Sewing, I will ask you this question:

Did the price decrease which Budweiser announced as effective January 4, 1954 adversely or otherwise affect your business; a drop from \$2.93 to \$2.68 for 24 12 ounces

The Witness: I would say: To an extent, yes, sit.

Hearing Examiner Hier: To an extent?

The Witness: Yes, sir,

Hearing Examiner Hier: You do not know the extent? The Witness: Well, I wouldn't know the extent it actual figures, but the point I mean when I say "to an extent" is that at that time there wasn't too much difference at the retail level, for instance, on the on premise outlets. However, at the off-premise outlet it did develop

Henry G. Sewing, Jr., for Commission - Derect

a sarrowing of the margin between the price on sales to the consumer.

Hearing Examiner Hier: Counsel hasn't gone into it, probably for reasons of his own, but the other witnesses have been asked and I will ask you:

The record in this case shows that in March, I think March 1, 1955, Budweiser increased its price from \$2.35 back to \$2.65 - I think it was somewhere in that neighbor hood; and you are more familiar with that than I am What effect, if any, did that have on your business?

The Witness: Well, immediately in March it dlda't lave too great an effect. However, it has accelerated our (202) business since that time, our business has increased.

Hearing Examiner Hier: Now, does that increase of business represent a recapture of retail outlets which deserted you during the price drop or does it represent new business acquired from, say, other brewers!

The Witness: Well, I believe that it is the recapture of consumers rather than retailers that deserted us.

Hearing Examiner Hier: Well, I realize I put it pretty broadly—but if the consumer wants it the retailer will buy it?

The Witness: Yes, sir.

Hearing Examiner Hier: All right.

Mr. Baker: We have no questions.

Hearing Examiner Hier: No questions?

Mr. Baker: No.

Herring Examiner Hier: You are excused, then, Mr. Seving; and thank you.

(Witness excused.)

Mr. Mayer: At this time I would like to call Mr. Smith.

William H. L. Smith, for Commission - Direct

WILLIAM H. L. SMITH was thereupon called as a witness for the Commission and, having been first day sworn, testified as follows:

(202) Direct examination by Mr. Mayer:

- Q. What is your business address, Mr. Smith!
- A. 3607 Florissant Avenue, St. Leuis, Missouri,
- Q. Are you here today, sir, in response to a subpostal
- A. Yes, sir.
- Q. And with what company, sir, are you associated?
- A. Carling Brewing Company.
- Q. And were you previously associated with the Griese clicck Western Company?
 - A. Yes, sir.
- Q. In what capacity are you presently associated will at Carling Company?
- A. I am sales manager for the Stag Division of the Carling Brewing Company.
- Q. And in what capacity were you employed by the Gitlesedleck Western Company?
- A. As sales manager for Stag Beer mainly deads with distributors.
 - Q. And for how long did you hold that position?
- A. With the Griesedieck Western, I think sinor about 1998.
- Q. And what were the duties of your position in 16% with the Griesedieck Western Company?
- A. To supervise the sales and operations of minutes tributors.
- Q. Now, sir, in 1954 in what areas were your products sold?

William H. L. Smith, for Commission-Direct

(204) A. We were in approximately 20 States. Some of those State, were—(after pause)—for lack of a better word, hang-overs from the Milwaukee beer strike in 1953.

We distribute the beer as far west as California; as far east as Pennsylvania; south to Georgia; and north to Wisconsin and Michigan.

- Q. Now, is there ordinarily a difference in price to the retailer between your product and Budweiser?
 - A. Yes, sir.
 - Q. Does Budweiser command a higher price?
 - A. Yes. sir.
- Q. And is this true in all areas in which your product competes with Budweiser?
 - A. It is now, sir, yes, sir-as far as I know.
- Q. And is that generally true of the price to the consumer which your product has as opposed to the price of Budweiser?
 - A. In some-well, generally true, yes, sir.
- (205) Hearing Examiner Hier: Do you sell f.o.b. the bewery?

The Witness: Yes, sir.

Ba Mr. Mayer:

- Q. Now, as contrasted to the St. Louis County and the St. Louis area in which a price differential was eliminated, in the areas in which you are competing with Budweiser and in which the price differential was maintained did you hold your regular market position in those areas?
 - A. Generally speaking, yes.
- Q. Now, sir, during 1954 was there any change in your product?

Willia . . L. Smith, for Commission - Direct .

- A. No. sir; as far as I know there wasn't.
- Q. Mi. Smith, directing your attention to Respondent's Exhibit 21-A, would you comment for me, sir, upon a accuracy of the figures thereon pertaining to the Griss dieck Western Company.
 - A. These figures are not accurate,
 - Q. And why is that, sir?
- A. Well, I can't go back—I know from 1948 have, 1953 these figures are inaccurate, possibly 1948 is corfue. I don't know about that, but I would say 1949, 1954, 1952 and 1953 are inaccurate, I am not sure on 1954.
- Q. Now, speaking with relation to the innecuracy of those years, would it affect the particular market slaw that that (206) exhibit discloses?
 - A. Yes, sir.
 - Q. It would?
 - A. Yes, sir.
- Q. And using 1953 as an example generally, what we happen to that figure?

Mr. Baker: Which figure are you talking about

Mr. Mayer: The figure showing percentage,

Mr. Baker: In the fourth column?

Mr. Mayer: Yes, sir, the column showing percentage

The Witness: That column showing percentages weaks be increased.

By Mr. Mayer:

Q. It would, sir?

A. Yes, sir. To what degree I don't know

Mr. Mayer: That is all we have, Mr. Examinat, in Smith.

Hearing Examiner Hier: Cross examine,

Chas communation by Mr. Baker;

- Q. Do you have a copy of your figures with you?
- A. No. sir; I do not.
- Q. Have you taken into consideration the fact that this Respondent's Exhibit 21 A deads with pacakge goods only?
 - A. Ins. sir.
- (207) Mr. Baker: Your Honor, we would like to have this witness bring in his correct figures, as he states those are in error, and postpone cross examination until we got the figures.

licaring Examiner Hier: Are they obtainable?

The Witness: Yes, sir.

Hearing Examiner Hier: Within what time? Can you reach them by phone?

The Witness: I can have them start working on them. Mrs. sir.

Hearing Examiner Hier: I mean, can you get them back here this afternoon?

The Witness: No. sir: I don't think so.

Henring Examiner Hier: Tomorrow morning!

The Witness: Either tomorrow morning or tomorrow afternoon. I would prefer tomerrow afternon to be sure.

Henring Examiner Hier: What do you say, counsel?

Mr. Mayer: Frankly, I would like to have the figures list to give the accurate picture of what it is like, to estable ish the accuracy, that was the only purpose for even comcenting on it.

Mr. Baker: We want the accurate figures too.

Mr. Mayer: I think it should be done on the Examiner's sistence for the witness to produce the figures. I don't sant to pertpone the ending of the matter, however.

(208) Hearing Examiner Hier: Mr. Smith, you will be excused now and return to your office and obtain these figures as rapidly as possible, because this set of hearings has to end this week. If you can get them by tomorrow morning, so much the better. And as soon as you get them return here with them.

The witness is temporarily excused from the stand to resume as soon as possible on cross examination.

Mr. Mayer: May I ask, however, when Mr. Smith returns that the cross examination be limited only to those figures. 'The examination, as I understand it, has been equeluited on the testimony.

Mr. Baker: No, we examined him only with respect to the figures, we found that he doesn't have them, and we are postponing all cross examination.

Mr. Mayer: I don't think that is fair. The testimon) was not related to those figures.

Hearing Examiner Hier: Relax a minute.

Is there any reason why you can't finish your cross examination while the gentleman is here on other matters, whatever other matters you may have?

Mr. Baker: Well, I think that the figures are the bulk of the examination and they go to his total examination. Insofar as I can see there are very few questions aside from that, and we might just as well do it all at one time when (209) this witness comes back with the figures.

Hearing Examiner Hier: You still have a chance for redirect, I don't know what all the squabble is about anyhow.

Mr. Mayer: It is just a matter, of time. I am one of the chief culprits, I guess, in that respect.

Hearing Examiner Hier: All right, you may finish your cross examination tomorrow.

You are excused, Mr. Smith.

The Witness: You want the figures to include the Hyde Park sales, is that right, or Stag only?

Mr. Baker: They include Hyde Park as shown on this exhibit; and they also show a breakout as between Hyde Park and Stag Beer, and for the years 1944 through 1954. And then they show a combined, another table combined for Hyde Park and Stag for the same years.

Hearing Examiner Hier: Do you want these figures back to 1944?

Mr. Mayer: No, sir; we have no particular interest in them at all.

Hearing Examiner Hier: What was your question? What was it limited to?

Mr. Mayer: It was limited, frankly, to the 1953 and 1954 figures on the tabulation.

Hearing Examiner Hier: You get the figures for 1952, 1953 and 1954, but do not go beyond that. I don't see (210) any point in going further than that.

Mr. Baker: I understand that counsel supporting the complaint is not questioning the accuracy of the earlier figures.

Mr. Mayer: I have no questions about them.

Henring Examiner Hier: All right, just those three years.

(Witness excused.)

(211) Mr. Mayer: Mr. Examiner, that is all we have at this time. I have a witness subpoenaed to attend at 3:00 o'clock. I made some allowance for the cross-examination of these witnesses, which obviously did not take blace.

Edward D. Jones, for Commission-Direct

Hearing Examiner Hier: How about getting him en the phone?

Mr. Mayer: I can try that, yes, sir. At this time he is probably on his way to the hearing.

Hearing Examiner Hier: All right. I don't think the taxpayers have gotten three hours' work out of me today. Get him here as soon as possible.

We will come back at 3:00 o'clock.

(A short recess was taken.)

Hearing Examiner Hier: Come to order.

Mr. Mayer: Mr. Jones is our next witness.

EDWARD D. JONES was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. Mayer:

- Q. What is your business address, Mr. Jones!
- A. Sir?
- Q. What is your business address?
- A. 300 North Fourth Street.
- (212) Q. Are you here today, sir, in response to a subpoena?
 - A. Yes, sir.
- Q. Mr. Jones, were you associated with the Griesielleck Western Brewery Company in 1954?
 - A. I was.
- Q. And in what capacity, sir, were you associated wit that company?
 - A. In 1954 I was chairman of the board.

Edward D. Jones, for Commission-Direct

- Q. How long had you held the position as chairman of the board, sir?
- A. I held the position of chairman of the board from February 16, 1953, until last November.
- Q. And as chairman of the board or in addition to being chairman of the board were you also the chief executive officer of the company?
 - A. I think so, yes, sir.
- Q. Now, sir, in 1954 what was the policy of the Griesedieck Western Company in declaring dividends and by that I mean was it was a quarterly basis, semi-annual basis, or on an annual basis?
- A. The policy of the company was to declare and pay dividends quarterly.
- Q. Did they declare a dividend on the first of October, 1954?
- A. We declared a dividend payable October 1. The dividence (213) was declared preceding that.
- Q. The announcement of the dividend was declared previous to that I understand. And with relation to the preceding dividend of the company, what did the dividend per share amount to in October of '54?
- A. The dividend paid on October 1 was 12.5 cents per share.
- Q. And what was the dividend paid for the preceding quarter by the company?
- A. The preceding quarter would be the July quarter, and that was 25 cents a share.
- Q. Now, sir, are you familiar with the fact that Anheuser Busch decreased the price of Budweiser in St. Louis and St. Louis County in January and then again in June of 1954?

A. Yes, sir.

Q. Was there any connection or causal relationship, sir, between the price decrease of Budweiser and the subsequent decrease in dividend declared by the Griesedieck Western Company?

A. I will ask you to state the question again, please.

Mr. Mayer: Would you read that, please?

(The pending question was read by the reporter.)

A. I think our directors had a very good accounting system and we caught trends and sales trends very quickly, and our sales went off in the summer referred to drastically in view of the fact that approximately one-fourth of our total business (214) was done in St. Louis and St. Louis County I think that our sales were materially affected and in projecting the sales our profits were materially affected and I think that was the basis for declaring a smaller dividend than the preceding quarter.

Mr. Mayer: That is all I have, Mr. Examiner, of Mr. Jones.

Cross-examination by Mr. Baker:

Q. Mr. Jones, in 1953 under what brands did you market beer?

Mr. Mayer: I object, if the Examiner pleases. This is all in the record through the representatives of the company previous to this, and Mr. Jones wasn't examined with relation to this. This is purely irrelevant to the testimony Mr. Jones gave.

Hearing Examiner Hier: It is certainly canadative It is in the record, Mr. Baker.

Mr. Baker: I withdraw the question.

(215) Mr. Baker: Your Honor, I would like to have marked as Respondent's Exhibit 39 a letter from Edward

D. Jones, "To our Stag customers," dated September 23, 1954.

(The document referred to was marked Respondent's Exhibit 39 for identification.)

Mr. Baker: And a letter of the same date signed by Edward D. Jones, "To our Stag Beer distributors."

(The document referred to was marked Respondent's Exhibit 40 for identification.)

By Mr. Baker:

Q. Mr. Jones, I hand you Respondent's Exhibits 39 and 40 for identification and ask you if they are true and correct copies of letters signed by you.

A. They are, I believe,

Q. They are true and correct copies?

A. I think so.

Mr. Baker: I offer these, your Honor.

Mr. Mayer: I object to the admissibility of these documents, your Honor. I wish to have the relevancy of these documents pointed out to the examination of Mr. Jones.

Mr. Baker: Let the Examiner look at them.

Mr. Mayer: Well, the documents are being offered and I am merely asking for what purpose.

Hearing Examiner Hier: What is the purpose, Mr. Baker!

(216) Mr. Baker: Your Honor, the witness has stated on direct testimony that the reason for the reduction in dividend in 1954 was because of the price cut in St. Louis of Anhenser-Busch. It is our purpose to show that that was not the reason; and this is part of that picture.

Hearing Examiner Hier: And you claim this letter indicates the reason for the cut in dividend in October 1954 was because they were selling out the Carling brewing business?

Mr. Baker: We are building up to that.

Hearing Examiner Hier: Well, I do not see any necessary sort of a relationship between the two. I mean, it is hard for me to understand why that would be relevant—

Mr. Baker: If your Honor will let us proceed we believe we can show that this company had a history of reducing dividends; that they were seeking and had been seeking for a period of time a purchaser and that was directly related to the decreased dividend.

(217) Hearing Examiner Hier: Now, Mr. Baker, injury to a competitor is no less an injury because that competitor is rocking on his heels financially and not in very good shape, if that is what your contention is, in fact it seems to me that that points up the injury more.

Mr. Baker: This competitor is not rocking on his heels. Hearing Examiner Hier: That is the only inference i get out of seeking a purchaser.

Mr. Baker: I think, if your Honor will go along with us, there were other reasons for seeking a purchaser aside from any alleged financial difficulties that the company was in.

Hearing Examiner Hier: Of course, Mr. Mayer, you brought out on direct that they cut the dividend.

Mr. Mayer: Yes, sir.

Hearing Examiner Hier: The witness has stated that he thought, it was his informed judgment and opinion that that cut was due to the price competition of Budweiser lowering its price.

Mr. Mayer: Yes, sir.

Hearing Examiner Hier: Certainly respondents have a right to show that that cut in dividend was due wholly or in part to other reasons than the price cutting. And this does not show it, but this may be part of the picture, the (218) full picture may show it. So I am going to admit these documents in the record—that is 39 and 40—and you may move to strike these and any other documents along the same line if it subsequently appears that the announced intention of showing other reasons has not been satisfactorily accomplished.

The Witness: Question, Mr. Examiner.

Hearing Examiner Hier: Pardon me?

The Witness: I didn't understand the phrase that this gentleman used, the company was rocking on its heels.

Hearing Examiner Hier: That was my phrase. I don't know whether you were or weren't. I was merely giving him an illustration there, that even if a competitor is rocking on its imancial heels—I don't know whether they are or not—

The Witness: I don't understand what you mean

Hearing Examiner Hier: I thought I gathered the inference from Mr. Baker's objection that if a competitor is looking for a purchaser because it is in financial difficulties it doesn't make any difference about price cuts. And I was trying to correct his impression in that respect so far as I am concerned. I didn't mean to imply that your company was rocking on its financial heels or was in bad shape or anything, I don't know anything about your company.

Mr. Baker: I want to state for the record that no (219) statement I made was intended to give that impression.

Hearing Examiner Hier: No, that was purely my starment.

(The documents referred to above, herefore marked Respondent's Exhibits 39 and 40 for idtification, were received in evidence.)

Hearing Examiner Hier: Go on.

Mr. Baker: Your Honor, I would like to have marked as Respondent's Exhibit 41 the Annual Report of the Griesedieck Western Brewery Company for 1946.

(The document referred to was marked Respondent's Exhibit 41 for identification.)

Hearing Examiner Hier: Off the record.

(Discussion off the record.)

Hearing Examiner Hier: Go ahead with your marking.
Mr. Baker: And as Respondent's Exhibit 42 for identification the Annual Report of the Griesedieck Western Company for 1947.

(The document referred to was marked Respondent's Exhibit 42 for identification.)

Mr. Baker: And as Respondent's Exhibit 43 the Annua Report of the same company for 1950.

(The document referred to was marked Respondent's Exhibit 43 for identification.)

Mr. Baker: And as Respondent's Exhibit 44 the (220) Annual Report of this company for the year 1951.

(The document referred to was marked Respondent's Exhibit 44 for identification.)

Mr. Baker: And as Respondent's Exhibit 45 the Alenual Report of this company for the year 1953.

(The document referred to was marked Respondent's Exhibit 45 for identification.)

Mr. Baker: I would also like to have marked for identification as Respondent's Exhibit 46 a letter from Edward D. Jones to the shareholders of the Griesedieck Western Brewery Company, dated October 1, 1954, to which is attached notice of special meeting of stockholders and proxy statement.

(The document referred to was marked Respondent's Exhibit 46 for identification.)

Mr. Baker: I would like to have marked as Respondent's Exhibit 47 a tabulation showing for the Griesedieck Western Company from the date of January, 1953 to December 1954 the monthly high and low of stock of that company.

(The document referred to was marked Respondent's Exhibit 47 for identification.)

Hearing Examiner Hier: Is it locally or nationally listed!

Ba Mr. Baker:

- Q. Can you answer that question, Mr. Jones?
- A. What is it?
- (221) Hearing Examiner Hier: Where was your stock listed?

The Witness: Listed on the New York Curb and the, Midwest Stock Exchange, duly listed.

(222) Mr. Baker: Your Honor, we offer in evidence Respondent's Exhibits 41, 42, 43, 44, 45 and 46.

Edward D. Jones, for Concuession Cross

Hearing Examiner Hier: How about 47?

Mr. Baker: We have not offered that yet.

Mr. Mayer: May I see them!

(The documents were handed to counsel.)

Mr. Mayer: I am sorry was 46 offered.

Hearing Examiner Hier: 46 was offered. 47 was not

Mr. Baker: That is correct.

Mr. Mayer: In view of the Examiner's ruling on particular exhibit, but for Exhibit 46 I can see no reason for encumbering the record with this. I fail to see any causal connection or any relationship with Mr. Jones' testimony and Exhibit 46.

Mr. Baker: There is no '54 annual report, and that takes the place of the '54 annual report.

Hearing Examiner Hier: The objections of Government counsel to respondent's Exhibit 41, 42, 43,744 and 45 are overruled, and the documents are admitted in evidence.

(The documents referred to, heretofore marked for identification Respondent's Exhibits 41, 42, 43, 44 and 45 were received in evidence.)

(223) Hearing Examiner Hier: Mr. Baker, as to Respondent's Exhibit 46, the only thing I see here which is of point is the financial statement—I mean telling the shareholders their rights, and the date they held the meeting and what was going to happen and all that sort of thing.

Mr. Baker: The reasons for the sale of the company are set forth on page 5, I believe, Your Honor.

Hearing Examiner Hier: 5!

I lourd D. James, for Commission Cross

Mr. Baker: And I think they are entirely relevant. Hearing Examiner Hier: All right. Let me get some more detail, then.

I think some of the reasons have some hearing on this dividend picture. Mr. Mayer. I dislike to see so much extra material which has no bearing on this case go into the record, but I think it would present a very lopsided picture to excise this paragraph alone, which I do think has some relevancy, so I will overrule your objection to Respondent's Exhibit 46 and admit it into evidence.

(The document referred to, heretofore marked for identification Respondent's Exhibit 46, was received in evidence.)

By Mr. Baker:

- Q. Mr. Jones, I show you Respondent's Exhibit 47 marked for identification and I will ask you to take a look at those (224) stock prices and see if they are correct?
 - A. I wouldn't know by looking at that.
- Q. Would you have an idea as to the general range, as to whether they look generally in accord with your recollection?
- A. The prices on those exchanges are established every day and I wouldn't leave it to my memory. It is a matter of record, and you will have to refer to the record. I wouldn't trust my memory on a day to day quotation of any stock exchange stock.
- Q. Would you be able to check these in a reasonable period of time?
 - A. What do you mean by reasonable time?

Q. Mr₄ Smith is coming in tomorrow morning, of year company. He is coming back to testify tomorrow morning and perhaps he could bring back from your office.

A. I doubt if he would have it. You would have to get that from the American or Midwest Stock Exchange, get an authority on that.

Hearing Examiner Hier: Why isn't that sufficient!

The Witness: I wouldn't know where he would have it, I wouldn't have it in my desk, and I doubt if the brewery would have it.

Your Honor, I think the New York Stock Exchange in New York would be glad to give it to you, but I would not hazard a guess on that.

(225) Mr. Baker: We will withdraw 47.

Hearing Examiner Hier: Mr. Mayer-

Mr. Mayer: Yes, sir.

Hearing Examiner Hier: Substantially what is on Respondent's Exhibit 47 is already in the record on Respondent's Exhibit 46; the range of prices are in there.

(The document referred to, heretofore marked for identification Respondent's Exhibit 47, was withdrawn.)

Mr. Baker: Your Honor, I ask to be marked as Respondent's Exhibit 48 a letter signed by Edward D. Jones, of June 23, 1954.

Hearing Examiner Hier: To whom is the letter addressed?

Mr. Baker: The letter is addressed to "Dear Friend" with a colon, obviously for the insertion of names after the colon.

(The document referred to was marked Respondent's Exhibit 48 for identification.)

Bu Mr. Baker:

Q. Mr. Jones, I snow you Respondent's Exhibit 48 for deutification and ask you if it is a true and correct copy?

A. (Examining document.) I think it is,

Mr. Baker: Your Honor, we offer 48 (handing document to counsel).

Mr. Mayer: We have no objection.

(226) Hearing Examiner Hier: Admitted.

(The document referred to, heretefore marked for identification Respondent's Exhibit 48, was received in evidence.)

Mr. Baker: That is all, Your Honor,

Mr. Mayer: We have no further questions.

Hearing Examiner Hier: Thank you, Mr. Jones.

The Witness: Thank you.

(Witness excused.)

Mr. Baker: Excuse me a moment. I wonder if I may be indulged a moment? We are missing some of the annual reports for the years 1949 and '48 and '52, and I am wondering if Mr. Jones would be so kind as to ask Mr. Smith to bring them in tomorrow morning? We searched and searched and were unable to get the annual reports for those years.

Mr. Mayer: Mr. Smith doesn't work for Mr. Jones any more.

*Hearing Examiner Hier: They have no contact any more, so I understand.

Mr. Baker: They are part of the same organization

Mr. Mayer: No.

Hearing Examiner Hier: No.

Mr. Baker: I beg your pardon.

Hearing Examiner Hier: We won't make an errant (227) boy out of you, Mr. Jones.

Mr. Jones: Thank you.

Mr. Mayer: Thank you, Mr. Jones.

Mr. Examiner, that is all of the witnesses we have called for today's hearing.

Mr. Baker: I wonder if we might have Mr. Smith bring in those reports?

Hearing Examiner Hier: Let's go off the record.

(Discussion off the record.)

Hearing Examiner Hier: On the record.

Very well, then, we will adjourn until 10 o'clock to merrow morning, and I also understand from you that you will be prepared to rest the Government's case around noon.

Mr. Mayer: I will, sir.

He ring Examiner Hier: And, gentlemen, whatever motions—I am not suggesting that you make any—but any motions you have to make you will make them on the record. You will argue and I will dispose of them to morrow.

Mr. Baker: May we go off the record, your Honor? Hearing Examiner Hier: Off the record.

(Discussion of the record)

(Discussion off the record.)

Hearing Examiner Hier: We will adjourn now to reconvene at 10 o'clock temorrow morning.

(Whereupon, at 3:45 p. m., an adjournment was taken until 10:00 a. m. the following day, Thursday, September 15, 1955.)

Thursday, September 15, 1955.

Met, pursuant to adjournment, at 10:00 a. m. Before: Frank Hier, Hearing Examiner.

Appearances as before.

-1+1-1

(200) Proceedings

Hearing Examiner Hier: The hearing will come to order.

Mr. Mayer: Perhaps at this time, sir, since Mr. Smith is here, it would be well to call him first with relation to the figures he has brought with him.

WILLIAM H. L. SMITH resumed the witness stand and testified further as follows:

Cross-cramination-Continued by Mr. Barton:

- Q. Mr. Smith, have you brought with you the annual reports for Griesedieck Western for 1948, 1949 and 1952, as requested by telephone yesterday and as indicated on the hearing record later in the day?
 - A. No, sir, I did not bring them with me.

Mr. Barton: May I have the subpoena duces become Your Honor!

Hearing Examiner Hier: Let's find out are the available?

The Witness: Yes, sir. I checked this morning anthey are available.

Hearing Examiner Hier: Well, you mean you refus to produce them?

The Witness: No, sir. They were in Belleville. (200) at the Belleville plant.

Hearing Examiner Hier: They can't get those does ments over here before noon.

By Mr. Barton:

Q. How far is Belleville?

A. Well, it is approximately 15 miles.

Mr. Mayer: With relation to that, Mr. Examiner, I would be willing to agree that if they were submitted at a later date by mail, that they be marked and submitted is evidence.

Hearing Examiner Hier: Mrs. Wick, we will reserve as Respondent's Exhibit 49 for the annual report for 1945.

Respondent's Exhibit 50, the same document for 1949. And Respondent's Exhibit 51, the same document for 1952.

(Respondent's Exhibits 49, 50 and 51 were reserved.)

Hearing Examiner Hier: Mr. Smith, will you obtain those reports and send them down to me by mail to Washington. Just address them to the Federal Trade Commission. I guess you better get my name straight—H-i-e-r. Send them to me as soon as possible.

The Witness: Yes, sir.

Hearing Examiner Itier: I will order them incorporated into the record over your objection.

Mr. Mayer: Yes, sir.

(231) Hearing Examiner Hier: Under those numbers, Mr. Barton: There is only one problem. We would like to get a copy of those for briefing purposes.

Hearing Examiner Hier: Do you have any objection to Mr. Smith sending those exhibits to Mr. Barton at the Jefferson Hotel?

Mr. Mayer: I have no objection.

Hearing Examiner Hier: All right, Mr. Smith, we will change that. Give them to Mr. Barton at the Jefferson hotel, Room 924, as soon as possible; today, if possible.

Mr. Barton: Thank you, sir.

Hearing Examiner Hier: Then you send them to me.

Mr. Barton: I will send them to you, yes, sir.

The Witness: We want to get them back, naturally. Could we have them photostated?

Hearing Examiner Hier: That isn't possible. When they go into the public court record they stay. Do you have extra copies?

The Witness: Well, that I don't know. I didn't know we had to give them up. They may be our only copy possibly.

Mr. Barton: I would be willing to substitute a photostat, Your Honor, if it would be agreed on all sides that it is a true copy of the original, and as far as we are concerned, if it is all right with Commission counsel, we will (232) have the documents photostated upon receipt of them, and then send to Washington a photostatic copy.

Hearing Examiner Hier: That is all right with me, by it seems to me that is going to be a pretty expension undertaking.

Mr. Barton: It is, but we have already invested a lein this case.

Hearing Examiner Hier: All right. You have the photostated here in St. Louis and send the originals loss to him and send me the photostats.

Mr. Barton: All right.

The Witness: If we have two copies I will let you knot and you can keep it.

Mr. Barton: Fine. It depends on whether you need a back.

The Witness: That is right.

Mr. Barton: Your Honor, I would like to state for the record at this point that a recheck of Respondent's Exhibit 21 has indicated an error on our part in the figure reported for Griesedieck Western 1953, barrel equivalent to sales of packaged beer in the St. Louis and St. Louis County. The figure in the exhibit presently is 334,335 barrels, barrel equivalent. The correct figure is 368,109 barrel equivalent. That of course would change the percentage figure which is in the next column, based upon the total barrels for 1965 in the (233) exhibit, from 22.53 to 24.81.

I regret exceedingly a mistake in this figure, but it was called to our attention last evening.

By Mr. Barton:

Q. Now, Mr. Smith, as I recall it on the occasion of your examination yesterday you stated with respect to the total company barrels on Respondent's Exhibit 21 that "I

know from 1948 through 1953 these figures are inaccurate, possibly '48 is correct, I don't know about that, but I would say 1949, 1951, 1952 and 1953 are inaccurate, I am not sure on 1954."

Then you were directed to go back and determine 1952 through 1954 the accurate figures according to the company's records. Now, have you done so?

- A. Yes, sir.
- Q. Well, now, directing your attention to 1952, what do you now say is the correct total company barrels for Griesedieck Western in that year!
 - A. 1,052,890 barrels.
 - Q. 1,052,000-
 - A. 830.
- (234) Q. And what do you now say is the correct figure for 1953?
 - A. 1,086,028 barrels.
 - Q. And what is the correct figure for 1954?
 - A. Well, I have 923,892—a small difference.
- Q. It could be shipments that—on December 31, I take it.
 - A. Yes. I brought four copies if you would want one.
 - Q. Pardon?
- A. I brought four copies, if you want one you can have it.
- Q. Well, I think it is in the record. You have nothing else that you have brought other than what you have now read into the record?
 - A. That is right.
- Q. Now, Mr. Smith, did you report your annual sales— I am speaking of "you"—did the company report its an-

nual sales to Beer Distributor Magazine or any other tradpublication in 1953?

- A. That I could not-probably did. I don't know.
- Q. In other words, it is customary in the industry for the trade publications to ask for your annual sales figures.
 - A. Yes. I myself never submit it.
- Q. Mr. Smith, I show you Commission's Exhibit No. 2 and ask you to read the figure which appears thereon for Griesedieck Western Brewery Company.
 - A. 1,483,631 barrels.
- Q. That is the same figure that was on Respondent's Exhibit No. 21?
- (235) A. I would have to check that but I assume that is right. I have a copy here. (After consulting document) That is right.
- Q. You, of course, had seen Commission's Exhibit No. 3 before—that appeared in trade publications, you were aware of the existence of this?
 - A. That is right.
- Q. Now, do you know who in your company reported this figure to the trade publications?
- A. I am not sure whether it is done by the same person each time. I know my father did submit it for one year, that I know—but I don't remember which year it was.
 - Q. I see. Who would be another person who would-
 - A. Well, I wouldn't know, I really don't know.
- Q. Now, in 1948 there was a merger between Griese-dieck-Western and Falstaff—I mean and Hyde Park, wasn't there?
 - A. That is right.

Mr. Mayer: I object, Mr. Examiner. I don't see any relevancy.

Mr. Barton: Now, at that time-may I proceed, your Honor!

Hearing Examiner Hier: Yes.

Ba Mr. Barton:

- Q. You were with the company at that time, weren't you?
 - A. Yes, sir.
 - Q. And what was your position?

Mr. Mayer: Wait a minute, before he answers these (236) questions, Mr. Examiner, I would like to have a raling on the objection.

Hearing Examiner Hier: What is the purpose of the examination?

Mr. Barton: Your Honor, I have a purpose that I think will become apparent as the question goes forward.

Hearing Examiner Hier: Very well. Objection overruled. Answer the question. Let us see what develops.

The Witness: In 1948 I was either assistant sales manager or sales manager.

By Mr. Barton:

- Q. Now, it was necessary in connection with this merger to have some documents filed with the Securities and Exchange Commission, wasn't it?
 - A. That is right.
- Q. And in 1954 Carling's Brewing Company acquired Griesedieck Western, didn't it?
 - A. That is right.
- Q. And the figures which were submitted to the trade publications for 1954 were submitted by Carling Brewing Company, weren't they?

- A. I assume so.
- Q. And you stated yesterday that the figures for 1948 appearing on Respondent's Exhibit 21 were correct!
- A. Without checking them I would say they probably were correct.
 - (237) Q. And that the 1954 figures were correct!
 - A. That is right.
- Q. And so the figures—the assumption or statement of inference is that the figures for 1949, 1950, 1951, 1952 and 1953 are incorrect?
 - A. That is right.
- Q. And you have demonstrated today that the figures for 1952 and 1953 differ from those which were submitted to the trade publications?
 - A. That is right.
- Q. Mr. Smith, would you please explain to me what the purpose was in submitting figures to the trade publications which were false?

Mr. Mayer: Objection. That has no relevancy whatso ever. Mr. Barton, I understand, is merely trying to substantiate the figures which appear on his own documents. This witness has testified as to the actual figures. Now, the reason for reporting any other—that has nothing to do with the actual facts reported in the figures themselves.

Hearing Examiner Hier: You say they have nothing to do with the witness' testimony or the credibility of the witness!

Mr. Mayer: No, sir.

Hearing Examiner Hier: Objection overraled. The witness may answer.

The Witness: The primary purpose, as I understand (238) it, when we took over the Hyde Park brand, their

sales at that time at the end of that year plus the sales of Stag Beer amounted to—without checking, again—I think that 1948 figure.

The Hyde Park brand sales from that time on deteriorated quite rapidly and I think, you know, that when these figures were published then, I would assume that whoever did it would be afraid that the decline of sales of Griese-dicek Westerr would be attributed to the Stag brand being the more popular brand and I would have—I think they would have kept—pegged the Hyde Park sales at that figure.

Ba Mr. Barton:

- Q. I see. When Griesedieck Western acquired Hyde Park in 1948 Hyde Park was a very popular brand, wasn't it!
 - A. Not very popular.
- (239) Q. Well, as a matter of fact, according to our records, Mr. Smith, that have been introduced in evidence here, in 1947, the year before Griesedick Western acquired Hyde Park Hyde Park sold approximately two million statistical cases of package beer in St. Louis and St. Louis County, and accounted for approximately 18 percent of the market for package beer in St. Louis County. Does that sound about right to you?
 - A. Yes.
 - Q. You accept it!
 - A. Yes.
- Q. And in that same year, 1947, Griesedieck Western which by the way was marketing Stag Beer at that time alone, wasn't it?
 - A. That is right.

- Q.—sold just a little more than Hyde Park in St. Lous and accounted for just over 19 percent of the package been market. Does that sound about right to you?
 - A. That sounds all right.
- Q. Who was the leading seller of package beer in St. Louis?

Mr. Mayer: Objection. The figures are in the record

By Mr. Barton:

- Q. In 1947 Griesedieck Western had 19 percent of the market?
- A. I don't know, it could have been either Griesediers Brothers or Falstaff, I couldn't recall.
 - Q. It wasn't Griesedieck Western.
- (240) A. Not until—I think we took over the lead a either October of 1947—we lost it in November, I think we regained it in December and held it.
 - Q. That was after you acquired Hyde Park?
- A. Prior to our purchase of Hyde Park, if these figures come into my mind properly.
- Q. In any event, during 1947 you had approximately 19 percent of the package market, Hyde Park had about 18 percent of the package market, in 1948 you because merged, GW, Griesedieck Western and Hyde Park. And the percentage of the market which the merged company had jumped to around 37 or 38 percent, didn't it, or higher in the ensuing years?
 - A. Are you adding the 18 and 19 for 1947!
- Q. Isn't it a fact that after Hyde Park and Griese dieck Western merged in 1948 that the brands put out by Griesedieck Western, namely, Stag, Hyde Park, and later Hyde Park 75, accounted for better than 40 percent

of the market and almost 50 percent of the package beer market in St. Louis for a period of five years?

- A. That is right.
- Q. It was only after Griesedieck Western acquired Hyde Park that that percentage of the market was obtained by Griesedieck Western, wasn't it?
 - A. That is true. However-
 - Q. All right, that is the answer to my question, sir.
- (241) Mr. Smith, in what areas outside of St. Louis and St. Louis County did Griesedieck Western compete with Anheuser-Busch in 1952 and 1954? Name it by markets, the major markets.
 - A. How do you define a market?
 - Q. St. Louis and St. Louis County is a market, isn't it?
- A. All right, would you want me to go into Peoria and Beardstown, and so forth?
- Q. What do you consider your market in which you were in competition with Anheuser-Busch in 1952, 1953 and 1954?
- A. If you want it that way I would have to get a list of all our distributors from that time and classify them. Hearing Examiner Hier: Let's take it by states.

The Witness: All right. We were in the State of Illinois, the State of Missouri, the State of Tennessee, Arkansas, Oklahoma, Kansas, Iowa, Indiana, Kentucky—it is all the way back to 1952, is that right? —Wisconsin, Michigan, Kansas, California, Texas, Louisiana, Mississippi, Georgia, Ohio, and Pennsylvania. To my knowledge—Alabama, New Mexico, Colorado, Idaho—that to my knowledge is the extent.

By Mr. Barton:

- Q. You are not what is called the local brewer, are you
- A. Yes, sir, we are, regional brewer.
- Q. You are a local brewer?
- A. A regional brewer.
- (242) Q. I see. And what was your position in the percentage of the market—what percentage of the market did you have in Illinois in 1952?
- A. This is for the Stag Brand only, or for the Stag and Hyde Park?
 - Q. Well, give it to me for both of them.
 - A. Well, I don't know offhand.
 - Q. How about 1952?
 - A. I don't know.
 - Q. 1954?
 - A. I don't know.
- Q. And you don't know for any of the states that you have named, or do you? How about Missouri?
- A. I don't have those figures with me. I could get the theores from Missouri, they have them, probably, as well as I do, they are all published.
 - Q. How about Tennessee?
 - A. I could find that percentage for you.
 - Q. But you don't know now?
 - A. No. I do not.
 - (243) Q. Are you salesmanager of the company?
 - A. For Stag brand only.
 - Q. How long have you been salesmanager for Star
 - A. Since approximately '48.
- Q. Mr. Smith, I note from Respondent's Exhibit Is in evidence which, by the way, is a tabulation of sales by brand by month in St. Louis and St. Louis County since

1968 to date, that Hyde Park jumped from approximately 2 per cent of the market, of the packaged beer market, in the first four months of 1951 to approximately 11 per cent of the market in the next three months; in other words, in May, June, July of '51, and then continuously dropped off damig the remainder of 1951 and 1952 until it accounted for less than 1 per cent of the market in 1953, and 1 am particularly interested in what happened in the summer of 1951 that the Hyde Park brand should have climbed to such a height and then dropped so far.

Mr. Mayer: I object, Mr. Examiner. I do h t see any relevance whatsoever to the direct examination of this witness, and that question.

Hearing Examiner Hier: Neither do I. What is the relevance?

Mr. Barton: Your Honor, there has been testimony as to the effect of price on sales, and I wanted to show the fact of what causes changes in the market.

Hearing Examiner Hier: The testimony though, Mr. (244) Barton, was confined to '53 and '54.

Mr. Barton: That is true, Your Honor, but I don't think that necessarily precludes the testing of the accuracy of that testimony.

Hearing Examiner Hier: If we started to get into the merchandising problems of every St. Louis brewery back to 1951 we will never get through.

Mr. Barton: My last question. Your Honor-

Hearing Examiner Hier: I will sustain the objection, Mr. Mayer.

Mr. Barton: That is my last question, Your Honor. Mr. Mayer: We have no further questions of Mr. Smith.

Miriam Chetin, for Commission-Direct

Hearing Examiner Hier: Thank you, Mr. Smith, (Witness excused.)

Mr. Mayer: We would like to call at this time, Mr. Examiner, Mrs. Chotin.

MRS. MIRIAM CHOTIN was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. Melangton:

- Q. What is your name and address, Mrs. Chotin!
- A. Mrs. Miriam Chotin, 3805 South Kings Highway
- (245) Q. Are you here in response to a subpoena?
- A. I am.
- Q. In what business are you engaged?
- A. Packaged liquor.
- Q. How long have you been engaged in that business!
- A. Well, two to two and a half years myself.
- Q. Do you sell packaged beer?
- A. I do.
- Q. In other words, you have what they call an off premise license, is that correct?
 - A. That is right.
 - Q. What does your work entail?
 - A. Purchasing and selling.
 - Q. Do you actually wait on customers?
 - A. Yes, I do.
- Q. In the operation of your store, Mrs. Chotin, do you get to know a number of your customers personally?

Miriam Chotin, for Commission-Direct

- A. Yes, to a certain extent.
- Q. Are you familiar with the price decreases of Budweiser in January and in June of 1954?
 - A. Yes, I am.
- Q. As a result of these two price reductions by Anheliser-Busch, was the price of Budweiser to you the same as that of other brands of beer?
 - A. At the second reduction.
 - (246) Q. After both reductions?
 - A. Yes.
- Q. What brands of beer do you offer for sale in your sore!
 - A. Falstaff, Stag, Griesedieck Brothers, Palist, Schlitz.
 - Q. Budweiser?
 - A. Budweiser.
- Q. After the decrease to you by Anheuser-Busch did ton offer Budweiser to your customers at the same price as the other beers?
 - A. I did.
- Q. What was the reaction of your customers to the lowering of the price of Budweiser to the price of other leas?
- Mr. Barton: I object, Your Honor. If Mr. Mayer would call every retailer in the City of St. Louis he could prove no more than is in the records already introduced in evidence here, and I submit that it is utterly irrelevant what any one of the 4,650 retail outlets in St. Louis may lestify here with respect to the effect of the price reduction.

Mr. Mayer: I am perfectly willing to stipulate with Mr. Barton and to release all the witnesses if in line with the statement he made he will state to me what the figures do show happened as a result of the Budweiser price decrease.

Miriam Chotin, for Commission-Direct

Mr. Barton: I don't say that the figures necessarily have any cause and effect. All I say is that the figures are in as to what happened throughout the market and that no testimony of (247) a retailer as to cause and effect is any more valid than those total figures are.

Hearing Examiner Hier: Yes, but, Mr. Barton, you know as well as I do the effect involved in this question of competition, the whole distributor chain. Now, she is at the bottom end, the tail end.

Mr. Barton: If Your Honor please, I think that's true more in a non-territorial stage than a territorial stage.

Hearing Examiner Hier: That is correct. At the same time, I think they want to know it.

The objection is overruled. You may answer.

Mr. Melangton: Would you repeat the question, please (The pending question was read as follows:

"What was the reaction of your customers to the lowering of the price of Budweiser to the price of other beers."

Hearing Examiner Hier: You may answer.

A. Well, I would say that quite a few of them—per centage did you want—I can't give exact percentage—switched to Budweiser, wanted to try Budweiser because of the price reduction.

By Mr. Melangton:

Q. Could you state the approximate percentage of the customers who did switch?

(248) A. Well, I would say approximately 75 per cent. Mr. Melangton: No further questions.

Hearing Examiner Hier: Just a minute. 75 per cent of your customers or 75 per cent of those who were buying other brands of beer?

Miriam Chotin, for Commission-Direct

The Witness: Of those who were buying other brands of beer.

Hearing Examiner Hier: Is your experience in the retail end sufficient to give me an estimate of what proportion of your customers are entirely price conscious without respect to quality or brand label or anything like that?

The Witness: Yes. I would say around 75 to 85 per cent of our customers are price conscious.

Hearing Examiner Hier: What is the minimum amount which would switch brands?

The Witness: I don't understand.

Hearing Examiner Hier: By that I mean now X beer selling for-well, you didn't sell it by the can. What is the price of a carton of six Cold Budweiser?

The Witness: \$1.05.

Hearing Examiner Hier: Now, is there another beer that sells for \$1?

The Witness: Yes, there is.

Hearing Examiner Hier: Is that 5 cents enough to switch?

(249) The Witness: For some, yes.

Hearing Examiner Hier: How much does it take to switch the 75 per cent?

The Witness: I just don't know-

Hearing Examiner Hier: How much price difference would it take to switch the 75 per cent?

The Witness: Well, the 5-cent difference wasn't on the six cans. I believe that they were asking about the case price. The case price, there is quite a bit of difference.

Hearing Examiner Hier: Yes, that is true. But what lam trying to find out is how much difference in a carton of six cans will change the buyer's preference from Budweiser to X, or Miller to Pabst?

Miriam Chotin, for Commission-Cross

The Witness: Not now, no.

Hearing Examiner Hier: Cross-examine.

(250) Cross-examination by Mr. Barton:

- •Q. Mrs. Chotin, how many cases of beer did you sell in total in 1953?
- A. I don't have any figures available right now, I mean, I wasn't told to bring any figures. There is no way that I could even tell you.
 - Q. You do not have any figures available?
- A. I have them available at my auditor's, yes, but I don't have them with me.
 - Q. Have you looked at them recently?
 - A. No. I wouldn't be able to tell.
 - Q. How many cases of beer did you sell in 1954?
 - A. The total amount?
 - Q. Yes.
 - A. I haven't the slightest idea.
- Q. How many cases of beer do you usually sell in a month, in July or August?
- A. Well, I could tell you my purchase over a week's period, but I couldn't state correctly over a month's period.
 - Q. Weil, now, let's take a week.
 - A. All right.
- Q. How about the average week in July, what would you purchase of total beer, all brands?
 - A. Of this year?
- (251) Q. Well, is this year any different than last year?
 - A. Yes.
 - Q. It is?
 - A. Yes.

Miriam Chotin, for Commission-Cross

- Q. You mean you are selling more beer this year than you sold last year?
 - A. A certain per cent more, yes.
 - Q. When did you set up your business?
 - A. We have been in business now for almost ten years.
 - Q. And you have had an increase in business each year?
 - A. No, no, no.
 - Q. How much is your business up in '55 over '54?
 - A. Well, my business is not up.
- Q. I thought you told me—you mean that just the month of July is up over last July?
 - A. No; no, sir.
- Q. What is your average week's purchases of beer in the month of July?
 - A. Total?
 - Q. Yes.
 - A. I wouldn't know; I wouldn't be able to tell.
 - Q. You do not have any idea?
 - A. No. I purchase beer from day to day.
 - Q. Well, is it 10,000 cases, 5,000 cases, 1,000 cases?
 - A. No, nothing like that.
- (252) Mr. Barton: May I have a subpoena duces teeun, Your Honor?

Hearing Examiner Hier: For what?

Mr. Barton: I want to ask for the production of all the records of purchases of Mrs. Chotin for 1952, 1953 and 1954.

Hearing Examiner Hier: Are such records in existence, Mrs. Chotin?

The Witness: Yes, they are.

Are you talking about the beer purchases?

Miriam Chotin, for Commission-Cross

Mr. Barton: Beer purchases. We are not interested in cigarettes or anything else.

The Witness: All right.

Hearing Examiner Hier: How long would it take you to produce these records?

The Witness: Well, I would have to get in touch win my auditor. I imagine about a day or two.

Hearing Examiner Hier: When do you wish these produced?

Mr. Barton: As soon as possible, Your Honor, I think all the testimony is utterly irrelevant, but I cannot have a witness getting on this stand making statements which obviously cannot be checked by cross-examination.

Hearing Examiner Hier: What I was thinking about, a day or two would take it to Saturday or Sunday.

(253) Mr. Barton: I realize that.

Hearing Examiner Hier: Would it be possible for you to produce these records tomorrow?

The Witness: I will try my best, I mean, I can call the auditor immediately.

Hearing Examiner Hier: All right.

Off the record.

(Discussion off the record.)

Hearing Examiner Hier: On the record, Mrs. Wick

That isn't feasible, to go after all of those records We would have to subpoen them from the witness.

You fill this out, what you want, or have Mr. Baker do it (document handed to Mr. Barton).

Hearing Examiner Hier: Mr. Barton, perhaps we could get at this another way

Mr. Barton: Yes, Your Lonor.

Hearing Examiner Hier: Mrs. Chotin, could you give us your gross business in beer in any month this year?

Eugene Weissman, for Commission-Direct

The Witness: No. I don't keep separate records.

Hearing Examiner Hier: All right.

Mr. Baker: Mrs. Chotin, what did you say your address was, please?

The Witness: 3805 South Kings Highway.

Hearing Examiner Hier: Off the record.

(Discussion off the record.)

(254) Hearing Examiner Hier: On the record.

Very well. Mrs. Chotin, you are excused as a witness and, Mrs. Wick the testimony of the witness Chotin is stricken from the record. Counsel in support of the complaint has withdrawn it.

(Witness excused.)

Hearing Examiner Hier: Proceed.

Mr. Mayer: Mr. Examiner, at this time I would like to call Mr. Eugene Weissman.

Hearing Examiner Hier: Come around, Mr. Weissman.

(255) EUGENE WEISSMAN was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. Mayer:

- Q. Are you here today in response to a subpoena?
- A. I ame sir.
- Q. And what is your business address?
- A. Our business address is 5080 Delmar.
- Q. With what company, sir, are you associated?
- A. Our company title is the Peoples Liquor, Inc.

Eugene Weissman, for Commission-Direct

- Q. And is that a chain of retail stores in the area!
- A. Yes, sir.
- Q. In what capacity are you associated with the company, sir?
 - A. Well, my title is secretary.
- Q. What are your duties in that position with the company?
- A. Purchasing of liquor; advertising; merchandising—anything that would make for a more efficient organization.
 - Q. Did you hold those duties in 1954?
 - A. I did, sir.
 - Q. And in 1953?
 - A. Yes, sir.
- Q. Are your stores located in the general St. Louis and St. Louis County area, sir?
- A. Except one. We have one store in Joplin, Missouri. (256) Q. How many stores do you operate in this area.
- sir?
 - A. 43 stores in this St. Louis area.
- Q. At my request, Mr. Weissman, did you prepare some figures with regard to the purchases of your company of beer in 1953 and 1954 and up to currently in 1955?

Mr. Barton: I object.

Hearing Examiner Hier: Why?

Mr. Barton: I am sorry. Perhaps 4 didn't under stand the question properly.

Hearing Examiner Hier: He asked if he prepared it.

Mr. Barton: I withdraw that.

Hearing Examiner Hier: All right.

Eugene Weissman, for Commission-Direct

By Mr. Mayer:

Q. May I have them?

A. Yes, sir.

Mr. Mayer: I would like to have marked as Commission's Exhibit 68-A and -B a tabulation of purchases of the Peoples Liquor Company in beers in 1953, 1954 and 1955.

(The document referred to was marked Commission's Exhibit 68-A and 68-B for identification.)

By Mr. Mayer:

Q. Mr. Weissman, directing your attention to what has been marked Commission's Exhibit for identification 68-A, would you tell us what the figures are appearing thereon with relation to whether they are case purchases or purchases by dollars?

(257) A. Well, these are dollar purchases.

Mr. Mayer: Mr. Examiner, I offer in evidence Commission's Exhibit for identification 68-A and -B.

Mr. Barton: Mr. Examiner, I object to the receipt in evidence of the exhibit on the ground it is irrelevant. I further object to it on the ground that as a matter of law retailers are unable to testify on the question of injury to a manufacturer, and that this relates solely to testimony of that nature.

Hearing Examiner Hier: Well, generally speaking, you are right. Mr. Barton, but retailers' records can form some basis from which an inference of injury or non-injury can be drawn. I do not think this is irrelevant. This is not the best evidence obtainable but it certainly is some indication of how he is doing in the beer industry—in beer sales to consumers.

Engene Weissman, for Commission-Direct

Mr. Barton: I further object on the ground that the records of one retailer of 4,000 retailers in St. Louis are not a reliable indication or index of what retailers in general are doing.

Hearing Examiner Hier: Well, that is a matter of weight.

Mr. Barton: I agree,

Hearing Examiner Hier: The objections are over ruled and Commission's Exhibit 68-A and B is admitted in evidence for what it is worth.

(258) (The document referred to, heretoformarked Commission's Exhibit 68-A and B for idea tification, was received in evidence.)

By Mr. Mayer:

- Q. I am sorry, Mr. Weissman, I, may be repeating But did you tell us how many stores you have?
 - A. We have in total 44 stores.
- Q. And are you the largest retail liquor chain in the 8 Louis and St. Louis County area?
- A. We consider ourselves the largest retail chain in the entire world.

Mr. Mayer: That is all we have, Mr. Examiner, of Mr. Weissman.

Mr. Barton: May we have a short recess, Your Holof, of three to five minutes?

Hearing Examiner Hier: Yes.

- (A short recess was taken.)
- (259) Hearing Examiner Hier: On the record.

Eugene Weissman, for Commission-Cross

Cross examination by Mr. Barton :

- Q. Mr. Weissman, the name of your chain is Peoples Liquor, is that it?
 - A. Our corporate name is Peoples Liquor, Incorporated.
 - Q. What is the trade name of your stores?
- A. We only sell under the Peoples Liquor Stores and the 95 Stores.
 - Q. Were they separate at one time?
 - A. Yes, sir.
 - Q. When did they merge?
 - A. It was four years this past year.
 - Q. And do you market a brand known as 905?
 - A. We certainly do.
 - Q. And that is called 905 Premium Beer, is it?
 - A. Yes, sir.
- Q. And what price per case do you pay for 905 Preminn Beer - it is in cans and bottles both?
 - A. Just cons.
- Q. I see. What do you pay for a case of 24 12-ounce cans!
- A. Well, if we include freight and delivery—which we must to bring our costs equal to the cost of local beers—our price is \$2.25.
- Q. And has that price been the same from the time you started (260) handling 905?
- A. Yes, sir; our cost and retail price have both been the same since its entrance into the market.
- Q. There has been no change in either the cost price to you or the retail price of the 905 brand?
 - J. No.
 - Q. And when did you come into the market with it?

Eugene Weissman, for Commission-Cross

A. If I am not mistaken it has been two years this past May.

Hearing Examiner Hier: Who makes this 905 Beer! The Witness: It is made by Atlas Prager in Chicago, Illinois.

By Mr. Barton:

- Q. Mr. Weissman, it is a fact, is it not, that the number of brands of beer which 905 stores handled increased in 1954 over 1953 other than Budweiser?
- A. If you will let me look at that slip it would mean more to me. Actually the only thing I am concerned with is dollar sales volume.
 - Q. I understand that.
 - A. You are speaking of 1954?
 - Q. Over 1953.
 - A. Yes, according to our record there was.
 - Q. How many was it increased other than Budweiser
 - A. Five.
 - (261) Q. Five beers increased in 1954 over 1953?
- A. Well, I would have to qualify that. I am including our sale of 905 from 1953, which we show as six month purchases against a 12-month purchase.
 - Q. And how many brands do you show on Commission's Exhibit 68-A and B?
 - A. How many brands do we show in the entirety!
 - Q. Yes.
 - A. Seven brands.
 - Mr. Barton: That is all.
 - Mr. Mayer: That is all we have, Mr. Examiner.

Hearing Examiner Hier: I want to find out about this switching. What has your experience been as to the

Motion to Dismiss Complaint

least amount which will cause a customer to buy one beer in preference to another pricewise?

Mr. Barton: May I get your question, your Honor?

Hearing Examiner Hier: It was not very well put, so I will rephrase it. I am interested in finding this out. Mr. Weissman. What is the minimal difference in price which will cause a customer to buy one brand of beer in place of another?

The Witness: Your Honor, I don't know whether I would be qualified to answer that as to a minimum difference. We must also take into consideration consumer habits and consumer changing of their purchases.

(262) Hearing Examiner Hier: Do you wait on the trade yourself occasionally?

The Witness: Very seldom.

Hearing Examiner Hier: Very well.

Anything more, gentlemen?

Mr. Mayer: We have nothing.

Hearing Examiner Hier: Thank you, Mr. Weissman.

(Witness excused.)

Hearing Examiner Hier: Who is next?

Mr. Mayer: Mr. Examiner, that concludes the case in support of the complaint.

Hearing Examiner Hier: Counsel have told me they have a motion or motions to file. Will you dictate them into the record. We will dispose of them later, but I would like to know what the grounds are now, and I am sure those who answer will want to know also.

(263) Mr. Barton: Anheuser-Busch, Inc., hereby moves pursuant to Rule 3.8, sub part (c), of the Rules of Practice for Adjudicated Proceedings in the Federal Trade Commission, for an order dismissing the complaint herein

Motion to Dismiss Complaint

on the ground that the Commission has failed to prove by reliable, probative and substantial evidence any violation of Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act (15 USC Sec. 13(a)).

In particular, in considering the whole record, the Commission has failed to prove (a) that the alleged practices tended substantially to lessen competition or to create a monopoly or to injure, destroy or prevent competition in the primary line within the meaning and intent of said Section 2(a) of the Clayton Act as amended, and (b) that the Commission has failed to prove a prima face case under the allegations of the complaint.

Hearing Examiner Hier: Well, as you gentlemen know. I intended to dispose of this motion at this session, but both sides have introduced a great amount of statistics. I might say an indigestible amount in the time we have had Necessarily a motion of this type requires analysis and comparison of the trends, proportions and so on, so as I indicated off the record yesterday, counsel for the respondent may have until Wednesday of next week, that is the 21st of September, to submit a brief in support of their motion, a (264) copy to be forwarded to Mr. Mayer and Mr. Melangton, and another copy to me by that time

Mr. Mayer can have such time as he deems fit to answer that brief, up until October 3, and I am setting a hearing for argument on the motion in Washington, D. C., Room 332, Federal Trade Commission, on October 3, 1955, for the argument and disposition of this motion.

Now, if the motion is overruled or rather denied, I will expect respondent to proceed with their proof, with their defensive proof either the last week in October or the

Colloquy

first or second week of November, depending upon everybody's calendar and convenience.

I understand, Mr. Mayer, that you are tied up.

Mr. Mayer: Yes, sir. I have hearings scheduled for the last week in October and the first week in November.

Hearing Examiner Hier: Well, then, gentlemen, it will probably be the second week of November.

Mr. Barton: I have some problems there, but if I can maybe shuffle around it will be convenient. We are anxious to get the case disposed of and I will attempt to meet that date.

Hearing Examiner Hier: All right.

Off the record.

(Discussion off the record.)

Hearing Examiner Hier: On the record.

(265) Mr. Barton: I would like to have the Commission's brief a little before we go into the hearing.

Hearing Examiner Hier: Yes, I think that is proper. Mr. Mayer, if you decide to file a reply brief, I think it only appropriate that Mr. Barton have that brief by Thursday preceding October 3.

Mr. Mayer: Mr. Examiner, as you know, if I would file a brief I will give it to Mr. Barton as quickly as possible. In our particular shop it takes something like five days subsequent to the day in which you submit it to get it greated, and I am faced with that problem in any brief that I file. The time is very short here, but if we file a brief I will give it to him just as quickly as possible.

Hearing Examiner Hier: Off the record.

(Discussion off the record.)

Hearing Examiner Hier: On the record.

All right, then, we will adjourn this case until October 3 in Washington, D. C.

(Whereupon, at 11:30 a.m. an adjournment was taken until 10:00 a.m., Monday, October 3, 1955, in Room 332 Federal Trade Commission, Washington, D. C.)

(266)

Monday, October 3, 1955

Met, pursuant to adjournment, at 10:00 a.m.

Before Frank Hier, Hearing Examiner.

Appearances same as before.

(267)

PROCEEDINGS

Hearing Examiner Hier: This hearing is solely for the purpose of oral argument on a motion to dismiss the complaint which was made at the close of the Government's evidence in St. Louis on September 15.

Since that time respondents have filed a very elaborate, well gotton to brief. I have read that brief, studied it and dissected it. Therefore, I say to the respondent and his counsel that there is no point in repeating what is in there already. I think I have got it in my head.

But I want to say to both of you that this business of picking out to show sales trends, market trend, a particular year which fits the particular purpose, and running thereon, doesn't go over with me. The period I am interested in here, and will be interested in, is from 1945 to

the present time. Why not 1945? Because, if I understand it correctly, that was the first year in which these breweries, all over the country, were turned loose to buy grain without Government permission and allocation, turned loose to make and sell as much beer as they wanted.

For instance, just to pinpoint this, on page 23—and I am just picking this out of your brief, because I am satisfied if he had filed one it would have been the same thing—that is an old briefing thing that I was taught many years ago, just like the rest of you—on page 23 of your brief (268) Griesedieck Western had 47.6 per cent in 1949, and that declined to 38.9 in 1954. But if you go back to 1945, you don't only see that downward trend from 1949 on, you see an upward trend from 1945 to 1949, and then a downward trend—I mean, the way it is set up, it looks as if Griesedieck was sliding indefinitely, which wasn't a fact. They increased from 1945 to 1949, and then they started declining.

Now, as I say, I have read most of your material. What I am mainly interested in hearing is from Government counsel, whose silence for the last ten days has been pregnant.

Do you have anything to add to what is in your brief?
Mr. Barton: If Your Honor please, my plan today was
to—as you say, we filed a rather elaborate brief, we are
thankful that Your Honor gave us the time in which to do
that.

As we told you in St. Louis, we had worked it up to about 75 per cent before the hearings began, consequently we were able to complete it in a week by dint of some hard work.

Hearing Examiner Hier: Yes, I can see that.

Mr. Barton: But I would like to address myself to the point Your Honor raised about Griesedieck Western. The point that must be understood is that Griesedieck Western's increase between 1945 and 1949 was largely the result of the acquisition of a competing, substantially competing, St. Louis brewery, which, as the evidence indicated, they acquired in 1948.

(269) Hearing Examiner Hier: I remember that.

Mr. Barton: And if you will recall, the percentage of the market which Griesedieck Western had in 1945 was 12.2; in 1946, 11.7; 1947, 19.3. And in that same year Hyde Park, the competitor whom it acquired in 1948, had 17.1. So that in 1948 it is true that it went to 44.9 per cent of the market, but it didn't go there because of normal business growth on the part of Griesedieck Western, it went there because it acquired one of the most substantial competitors in the St Louis market, a competitor who in 1945 or 1946 had been the second brand in St. Louis.

Hearing Examiner Hier: That may be, Mr. Barton But what I mean is, when it comes to market trend, sales trend or market trend, regardless of acquisition, sales of anything else, I am going to insist on the period in 1945 to 1955, and that period only.

Mr. Barton: Well, Your Honor, I think that fits in with our analysis in the case.

Hearing Examiner Hier: It is all right with me.

Now, do you have anything to add to what is in your brief, something additional? I don't see how you can have much.

Mr. Barton: That is a difficult question.

I would like, if I might, to simply point out a few of the salient points we make in the brief which we submit should bear on Your Honor's judgment in the case.

(270) Hearing Examiner Hier: Which I just read twenty minutes ago.

Mr. Barton: I realize that, and we expected that.

If it would be helpful, Your Honor, I would like to point out the matters that we consider significant.

Hearing Examiner Hier: I won't cut you off.

Mr. Barton: At this juncture of the case we see two issues. Our contention is that the Commission has failed to establish a prima facie case. We think that the issues under that, principal issues, are:

1: That the Commission has failed to establish that there was a discrimination in price by Anheuser-Busch in connection with the lowering of the price of Budweiser in St. Louis for the eight-month period;

Secondly, we feel—it is our contention that in any event the evidence adduced by the Commission to date has failed to prove that there was a substantial lessening of competition, or any tendency to monopoly—in other words, any injury to competition—as a result of Anheuser-Busch for an eight-month period meeting the price of three competitors who had 82 per cent of the St. Louis market and had had it for years.

Hearing Examiner Hier: Are you seriously contending this doesn't amount to a territorial price discrimination?

Mr. Barton: Yes, we are I don't think that is the principal issue. I think the principal issue at this juncture (271) is whether there was a showing of injury to competition. I think there is a point—as to whether there is a price discrimination within the meaning of the Act, I would like to revert to that in just a few minutes, if Your Honor will bear with me.

I will merely refer to some salient points briefly,

No. 1, the market position of Anheuser-Busch. It is alleged to be the leader in national sales. It is the leader in national sales. But it is important to note that it doesn't have a leading position in any important market in which it does business. Though it does between 7 and 5 per cent of the national sales, its ranking in every important market in the country except one is less than that And the only one in which its percentage of the market exceeds that is Illinois, adjacent to its principal place of business, and even there it is not the leader in sales.

Hearing Examiner Hier: Your point is that this is not the big dog; the small fellow?

Mr. Barton: It is not the kind of case that General Foods was.

Hearing Examiner Hier: I understand that. But it is true, is it not, that Anheuser-Busch did increase its share of the market in St. Louis slowly, but nevertheless consistently, for two and a half to three years prior to this price cut?

Mr. Barton: Yes, as a result of a change in sales (272) methods. In other words, as Mr. Hallquist has testified, some time prior to 1954 they had gone to a system of off-premises and on-premises—in other words, the sales force had been divided, and there had been a special effort made to develop the off-premise outlet sales of Budweiser. There had been advertising changes, changes in advertising program, there was a small, steady increase in Budweiser sales, that is true, not very large, however.

Hearing Examiner Hier: There are two points there that I am not satisfied with at all—of course, there are a number of other points, too—I may be stealing his thunder.

I don't know, I don't know what he is going to say—but why was it necessary to cut prices in St. Louis and St. Louis County, when your market share was slowly but steadily increasing?

Secondly, you make the point that this was a testing business, which, of course, is lifted bodily out of the dissenting opinion in the General Foods case—for which I don't know that there is any judicial authority, but that is a legal point. Why pick St. Louis?

You said, or your witness said—or rather, his witness, but your official said—that there was—what was the expression he used? A substantial—I have forgotten the expression now.

Mr. Barton: There was a substantial potential in (273) that market.

Hearing Examiner Hier: I guess that is what it was, a substantial potential.

But it seems to me that if you were going to test the market, you could have tested it in a region where you were losing business, and losing it rapidly. I don't recall now, but it seems to me Texas was one—and having had some experience with your general counsel some years ago in a basing poirt case, I expect that is because Falstaff has a brewery down in New Orleans strategically located.

Mr. Barton: It is due to a number of factors, Your Honor. The Texas situation is a complicated one. There is a perfectly good explanation of why it wouldn't be done in Texas.

Hearing Examiner Hier: I could mention Fort Wayne; you have got another there strategically located either under contract or ownership.

Mr. Barton: No.

Hearing Examiner Hier: That is Falstaff!

Mr. Barton: We have not acquired any brewery a another place in the entire corporate history of Anhenser-Busch.

Hearing Examiner Hier: I mean Falstaff has on there, and that undoubtedly gave you great transportation cost trouble in that area.

Mr. Barton: That was acquired rather recently; the (274)—Fort Wayne brewery was a recent acquisition by Falstaff.

Hearing Examiner Hier: I can't see why you pickel St. Louis County, where you gained business instead of where you were losing it, to do this testing.

Mr. Barton: Let me get to that point. I think the whole decision to make the effort in St. Louis has to be viewed in the light of the whole background.

That background was that Anheuser-Busch does busness all over the country, that the beer markets in which it does its business are not under its control; the price in those markets is not made by Anheuser-Busch, the price is made by the various competing brand in those markets.

The fact is that economic forces reinforce the situation that the local beer markets are going to be supplied by the regional and local producers. There are varying cest factors, there are varying taxes, there are varying state and local regulations which contribute to and require that that be true.

Now, that situation in which the local markets are the important areas of competition has become increasingly important over the years since the war, and became more so in 1953, because there has been a marked increase of the public acceptance and in the importance of the con-

peting regional and local breweries. It is evidenced by the phenomenal natural growth, both in total sales and in the percentage of various (275) local markets, by Anheuser-Busch's regional competitors—Falstaff, for example, the phenomenal growth it has had from twelfth several years ago to third in national position. Carling, a substantial brewer in Cleveland, who acquired Griesedieck Western in St. Louis, whose growth is outlined in the brief, is another one. And Hamm's, a Minneapolis brewer, whose growth has been phenomenal. And Stroh, a Detroit brewer, and many others.

Now, the development is the more important, since at the same time these regional brewers have grown Anheuser-Busch has been falling off. In other words, between 1953 and 1954 Anheuser-Busch's sales dropped off 13 per cent, while the industry was dropping something around 5 per cent. While Anheuser-Busch's sales were dropping, these competing regional brewers' sales were going up.

That is the one background factor. The other background factor is that the St. Louis situation must be viewed in the light of the serious sales reverses which Anheuser-Busch experienced in the latter part of 1953.

What do the figures show? They show that in December, 1953 Anheuser-Busch's sales of packaged beer in eighteen states were less than half of their sales in December, 1952, and that its total sales of packaged beer in December, 1953 were 35 per cent less than its sales of packaged beer in 1952 on a national basis.

(276) Now, the magnitude and the extent of that trend was confirmed by the fact that in 1954, as I said, Anheuser-Busch's sales nationally dropped over 13.6 per cent from

the 1953 sales, while the industry dropped only roughly 3 per cent.

Now, when this severe national sales reverse occurred the opinion in Anheuser-Busch and among its executives was divided as to what to do. Various solutions were efferred.

Hallquist testified, for example, that some executives suggested and recommended the introduction of new packages, and experiments along that line in those states, where it was permissible to introduce new packages, were undertaken.

As Hallquist testified, the beer business is an extremely regulated business. It is not possible for the beer business to adopt merchadising techniques that are adopted by other industries. They can't introduce new packages in every state. There are various laws prescribing and regulating the types of packages that can be introduced.

There were suggestions about the introduction of new products, and in fact, as the record discloses, after the St. Louis price reduction and the determination that more beer could indeed be sold if it could be sold at the same price as the dominant beers in that market, a new product was put out.

Anheuser-Busch put out a product in March, 1955. Busch Lager Beer, which is selling in the market where it is being sold at the same price as the regional and local beers (277) that are sold in those areas.

Now, finally, one of the moves in that process of experimentation was to lower the price in St. Louis.

Now, the reason for the St. Louis price reduction was twofold. In the face of the serious national reverses, they wanted more business, they needed more business, they needed it immediately. That was one reason.

(278) The second reason was to obtain an answer to the questions that had been raised as to the reasons for the sales reverses and what could be done to reverse that trend.

Hearing Examiner Hier: That trend was evident in St. Louis and St. Louis County, though?

Mr. Barton: The trend had not taken effect in St. Louis County, to be sure. But you must remember that the percentage of the market and the sales of Anheuser-Busch had in St. Louis County were extremely small compared to everybody else in that market.

In other words, they were around ten per cent, when the principal competitors had percentages like 40 per cent, 25 per cent. They were peanuts in the St. Louis County market.

Hearing Examiner Hier: You say this price foray was experimental and inquisitive, but not punitive?

Mr. Barton: That is unquestionably true.

Hearing Examiner Hier: It has some aspects of being punitive, if you want to put it that way.

Mr. Barton: Nothing that I am aware of in this record. Hearing Examiner Hier: That is just a matter of interest to me. Go ahead.

Mr. Barton: Well, so far as what actually happened in St. Louis—now, you recall, Your Honor, that part of the program in St. Louis initiated in January, 1954, was to introduce the pedal system of delivery. For years the method (279) of distribution of Budweiser's products in St. Louis had been on the basis of a telephone order system—in other words, the telephone operators would call

the various outlets, ask them that they needed, take their orders, delivery to be made on a rebilled order.

Other St. Lonis competitors had long been on the peddle system. Obviously the difference in distribution methods had an effect on sale. It is the difference between having every routeman and salesman—as all of its competitors did—make the solicitation and having the solicitation done by telephone, which is a demonstrably and obviously weaker method.

So that was introduced in 1954, in January.

At the same time, or about the same time, the price of Budweiser was reduced. Now, it was reduced at that time as you will recall, on 24-12-ounce returnable bottles. The difference was 50 cents between Budweiser and Stag, Falstaff, Griesedieck Brothers. The reduction was made in January of 1954 of 25 cents, reducing that differential to 33 cents.

What happened? The reduction had very little effect on sales. It had no more effect than could have been expected from an increased advertising program, the introduction of the peddle system of delivery, and the normal trend which has been in effect over several years. The fact is that the reduction in price, which Anheuser-Busch made in January, 1954, (280) was reflected only in the price to retailers in the over-the-bar sales.

In other words, the retailer got a decreased price, that is, he paid less for Budweiser, but he didn't pass that reduction on to the consumer. So that the nickel over-the-bar differential that existed in many outlets in St. Louis for Budweiser over the other brands was maintained, and consequently there was no change, roughly no change, in the sales picture as a result of that 25-cent reduction.

Now, by June of 1954—and incidentally, I would like to ask as this point whether the government is contending or makes any contention that the January price reduction of 25 cents was a discriminatory price reduction that had the effect on competition that is alleged in the complaint? Of course, they referred to the 25-cent reduction in the complaint, but it is not clear whether they contend that it had the effect—and it is certainly clear from the record that it did not.

Now, then comes the June 1954 decision. Now, the decision to reduce was taken in the light of the continued deterioration of Anheuser-Busch's position nationally. There is no bright spot in the national picture between December of 1953 and June of 1954, if you refer to Respondent's Exhibit 18. Some people in the company took the position that Anheuser-Busch's taste was not acceptable to a large number of (281) consumers. And so the decision was taken to further reduce the price in St. Louis.

Now, Your Honor asked why St. Louis, rather than Texas, or some other area where sales were dropping off.

Now, first of all it must be conceded, I think, that with Anheuser-Busch being !ceated in St. Louis, and it being a fairly substantial beer market, and Anheuser-Busch having a percentage over the years ranging from 6 per cent of the market to 11 or 12 per cent, that there was a good potential for development there—in other words, they were there, their productive facilities were in St. Louis, they had a delivery operation direct from the brewery to the retailer in St. Louis. It was an area in which, if they built the market up through advertising, through getting the consumers to take the taste test on Budweiser, they could

expect at the end of the period of development to retain some of the business. It is different from the situation in which they go into an area in which their market potential is less, where they might carry on an extensive advertising program, an extensive sales program, and then stopped.

In other words, not earry on that extensive programs. They wouldn't expect to maintain in that kind of an area the same continued effect of the sales program as they could in St. Louis, because they are in St. Louis, they are ever present there, whereas they are not ever present in New Orleans or in (282) Memphis, Tennessee, or in Texarkana, Texas.

And as soon as they pull out with their advertising program their competitors close right in on them and take away everything that they have gained during the period of the program.

Hearing Examiner Hier: I understand that last ene, but that first remark you made about the sales potential being greater in St. Louis and St. Louis County over every other market in the United States, I don't understand.

Mr. Barton: That I didn't say.

Hearing Examiner Hier: What did you say?

Mr. Barton: What I really meant by the sales potential is that the potential for retaining sales which were developed was better in the St. Louis market than in any other market of the country.

Hearing Examiner Hier: Without continuing the extensive advertising!

Mr. Barton: Without continuing the extensive advertising and sales promotion program.

If Your Honor please, I think that is demonstrable it is not demonstrable on this record as it now stands—but

I think it is a fact of which Your Honor can take notice, that as a matter of economics the home town company can expect to do better in its own bailiwick by a sales promotion program, and can continue to do so thereafter, than it can by carrying (283) on that program in some other part of the country where, as soon as it turns loose, as soon as it turns off the program, the competitors who are in that area can very readily pick it up.

Now, there are other factors in connection with doing this in St. Louis. It could be done under the observation of the home office. That was Anheuser-Busch's head-quarters. It was necessary to learn and to know what was happening quickly. And the sales executives of Anheuser-Busch was in St. Louis, and they could see and observe what was done, and what the effects of the price reduction were.

Another important fact is that in St. Louis Anheuser-Busch distributes directly to the retailers. You will recall that in most of these other areas, or in Texas, for example, they distribute through wholesalers.

Hearing Examiner Hier: You have five areas where you distribute directly, don't you!

Mr. Barton: No, there are 21, actually.

Hearing Examiner Hier: 21?

Mr. Barton: That is right.

Hearing Examiner Hier: That have direct distribution.

Mr. Barton: They are the metropolitan areas—New York, Washington—it is in the record. But the point is that in Texas, for example, in most of Texas the business is done through a wholesaler. And the fact is that it was im-

portant that the price reduction be passed on to the consumer.

(284) Hearing Examiner Hier: Your first experiment wound up in nothing, coddling the retailer price-wise mean nothing, you had to get to the consumer?

Mr. Barton: That is right. If you are doing business through the wholesaler, if you are selling to the wholesaler, and he sells to the retailer, and you pass on that price reduction, it may or may not reach down to the consumer level.

Hearing Examiner Hier: Just a minute. Before yet get off this point, I want to check your statement on this You said that this January price drop in St. Louis, that there had not been a bright spot in the national picture. That Budweiser was still going down. Now, I am looking at Respondent's No. 3, page 11, total AB sales in January. 1954, is 337,119 barrels, which is considerably down from the 1953 sales for the same or comparable months.

In 1953 you slid from 546,000 in January—not, in July—Mr. Barton: Which page are you looking at Your Honor?

Hearing Examiner Hier: That is page 3—you slid down until in December you were only selling 247,000 and some odd hundred barrels. But that picture did brighter. Mr. Barton; in 1954 it went up to 337,000; in February of 1954 it was 295,000; in March it went up, in April it went up. You got up around 400,000 barrels.

(285) Mr. Barton: Your Honor, may I call your attention to another exhibit which more graphically demonstrates the national sales picture. That is exhibit number—Respondent's Exhibit No. 14.

Hearing Examiner Hier: I have seen that referred to a let.

Mr. Barton: I would like to explain the significance of it.

Hearing Examiner Hier: Go ahead.

Mr. Barton: Now, if you will notice on Exhibit 14, it is the sales of Budweiser by months in the years 1952, 1953, 1954 and 1955, by wholesalers and by branches. In other words, it is the over-all national sales picture of sales actually to the retail trade. It is the actual barometer which is viewed by the sales executive as to how we are doing. And observe the figures. In November 1953 there was a drop compared to November 1952, 4,568,000 to 4,349,000. In December there was a drop, 5,305,000 to 5,038,000.

Then each month in 1954, January through October, it was worse, and in many cases much worse, than the prior month in 1953.

Observe the figure for January 1954 compared to January 1953.

Hearing Examiner Hier: How do you line that up with this other exhibit! These figures don't seem to gibe.

(286) Mr. Parton: They gibe in this sense, that the other exhibits are consumption figures.

Hearing Examiner Hier: As long as they are AB consumption, what difference does no make!

Mr. Barton: No, they are AB sales in that state— Hearing Examiner Hier: There is a lag.

Mr. Barton: That is right, there is a lag. This Exhibit 14 is the kind of an exhibit that a sales manager looks at monthly and decides what is the national sales picture.

Hearing Examiner Hier: That is cash in the till?

Mr. Barton: That is what is going out in the lines of distribution. In other words, if you don't get it out in the line of distribution in January, you are not going to have the sales in February. And by virtue of the fact that it is comparing figures which we have in our files—in other words, we have our actual January sales by wholesalers and by branches.

You see, the system is that each wholesaler sends in a the end of every month his sales, and they get it from the branches, so it gives an actual barometer of the situation. So you can see that the fact is that the national sales picture over-all had continued to deteriorate from the end of 1953 on through 1954.

Now, the point Your Honor makes from the other exhibit is an indication that in every month it was not the same in every state.

(287) In other words, the drop-off was more serious in December of 1953 over-all, state by state, than it was, say, in March, compared to March the year before. But the over-all picture is the one that is given on this Exhibit 14, and it shows that the Anheuser-Busch sales picture began to deteriorate in November of 1953, and it continued to deteriorate on through the period of the second price reduction in St. Louis.

Now, in addition to that it was quite clear from the January price reduction in which the price had not been passed on to the consumer that in order for Budweiser to develop a larger sales in St. Louis, they had to promote some kind of a taste test of Budweiser.

What makes the consumer change brands? You asked Meurer when he was on the stand, what are the factors which cause a consumer to change brands? He couldn't answer the question. The fact is, however, that there had been built up over the years a tremendous inertia among consumers in St. Louis. Look at the figures. From 1949 through 1953 between 80 and 90 per cent of the beer sold, packaged beer sold in St. Louis, was sold by three companies, not including Anheuser-Busch, by the way.

In other words, Griesedieck-Western, Falstaff, and Griesedieck Brothers. Interestingly enough, there hadn't been any such domination by the three in the prior period. In 1945 there were six competing brewers, and no one of them had more (288) than 19 per cent of the market. It wasn't until Falstaff and Griesedieck-Western acquired their important competitors, each of them acquired an important competitor in St. Louis, that this condition of domination of the market by three to the exclusion, incidentally, of others who in 1945 accounted for 13 per cent of the market, but who, by 1953, had been squeezed out and accounted for around 4 per cent of the market, existed.

Hearing Examiner Hier: Haven't you proven that taste is dependent, to some extent, on the price?

Mr. Barton: No. I think what the price experiment proved is that if you can get the consumer to taste your product, some of them—not too many, but some of them—will stay with it.

Now, what does the-

Hearing Examiner Hier: Taste only requires a purchase of one bottle or one can. I certainly can't see that a nickel difference is going to stop you from buying one can.

Mr. Barton: Yes, but the trouble is that most been in the off-premise market is not bought by the bottle or by the can, it is bought by the case.

Hearing Examiner Hier: That is true. I don't know where you do your sampling, but I generally do mine in a saloon, not a grocery store or liquor stores. I don't want to buy a whole case of whiskey to taste it.

Mr. Barton: I don't think you can get a representative (289) opinion from one bottle, one sip, after you have been drinking the other brand for five years, merely tasting it for one drink is not what is required to induce you to change.

Hearing Examiner Hier: I think what you say there applies to government counsel more than it does to me.

Go ahead.

Mr. Barton: Let's see what actually happened a a result of that program. Now, over the five months—for months between April and July of 1955, which are the lettiques in the record now—Anheuser-Busch accounted for 21 per cent of the market. And that includes not only sales of Budweiser, but includes sales of the Busch lager which came onto the market in March of 1955. The conclusion that Anheuser-Busch succeeded in picking up new drinkers and keeping them is somewhat blurred by the fact that Anheuser-Busch's share of the market today is not much lower—in fact, it is almost the same,—as it might have obtained if the trend in existence in 1952-55 had continued, as is indicated in that chart.

Hearing Examiner Hier: You are talking about S. Louis, the St. Louis market?

Mr. Barton: Yes, talking about the St. Louis market .

It is also blurred by the unresolved question of how many of the drinkers who came to Budweiser in that period and were with them during that five-month period since the price went up, will stay with them.

(290) In other words, they may drop off tomorrow, the next day, the next month, two months from now. And it is also blurred by the fact that we can't tell how much of that increase was due to increased advertising, the peddle system of delivery—which was certainly a change in method of marketing—and in the general increased sales activity of Anheuser-Busch.

Hearing Examiner Hier: Now, the other brands increased, didn't they, all other brands?

Mr. Barton: They increased tremendousuly.

Hearing Examiner Hier: And Budweiser then retains some 9 per cent, if I remember right, from 12 to 21, is that right?

Mr. Barton: That is about right.

Hearing Examiner Hier: So it must have come out of the hide of Griesedieck Brothers, Griesedieck Lucthers or Falstaff. As I recall, it didn't get out of Falstaff.

Mr. Barton: Obviously it didn't come out of Falstaff. Hearing Examiner Hier: So it must have come out of the other two.

Mr. Barton: I would like to revert to that in a moment, as to how we can determine reason for changes.

But I would like to point out just a few more points about this price reduction. You will note that Anheuser-Busch at no time in that period had more than around 38 per cent of the market. I think in one month, in February, when the (291) price change was announced, the price increase was announced, there was a lot of loading up, but

that wasn't a normal month. What happened was that immediately after the price increase in June they went to around 37, 38 per cent of the market. They slipped down to as low as 33 per cent in the ensuing period, and then went up again in February—they went up in December as the result of a particularly good advertising program, and then they slipped a little until January, and February, course, was not a valid test period for the market proposition.

The important thing to note is that at all times in St. Louis 60 per cent of the beer was sold by these competing brands. Anheuser-Busch, its percentage of 35 per cent was not as large as Griesedieck-Western had had for five years, between 1948 and 1953.

It is interesting to note that in no month did Anheaset-Busch sell as much beer as Griesedieck-Western had sold in each of the summer months from 1949 to 1953.

In other words, this drive, this price reduction by Anheuser-Busch, indicated that there was a substantial segment of the St. Louis drinkers, who liked other brands, didn't even at the same price desire to try Budweiser, to the extent of 60 per cent. Anheuser-Busch's percentage never got above 38 per cent in the packaged beer market

Now, I submit to Your Honor that that fact has unpertance, both (292) with regard to relative public acceptance, and more importantly, with regard to the ask of showing of any tendency to monopoly so far as the price reduction was concerned.

What the test really shows is that Anheuser-Busch, if it would seek to increase its business materially in any market, had to have a product in that market of comparable price to other beers in the market. It shows that for

St. Louis, that is a lesson that it had to take to heart for sales all over the country. And it showed further that in order to do that they had to have a comparable—they had to have this comparable price in addition to a comparable advertising and sales promotion program, because, you see, the peddle system went into effect in January, 1955, the pricing program went into effect in January, 1954, but there was no appreciable increase in sales.

Hearing Examiner Hier: What do you say to this, Mr. Barton? A concern by such dramatic and interesting price rate as this increases its share of the market in one county in nine months from 12 to 38.9 per cent. Would you say that it that had continued there was no tendency to monopoly?

Mr. Barton: You mean continued where?

Hearing Examiner Hier: If they had not gone back up to the \$2.65 or \$2.68 price—which was it?

Mr. Barton: \$2.68.

Hearing Examiner Hier: \$2.68. Now, there was quite (293) a dramatic showing for the price increase for that period. But what I am seeking here is potential rather than actual. These competitors testified they got practically all of this business back.

Mr. Barton: They did.

Hearing Examiner Hier: So I contend that counsel for the government cannot contend that there was any permanent or lasting injury. But the potential is—especially on the motion to dismiss at the close of government's case—the conclusive factor, in my opinion.

You have had a lot of experience. You must realize that this was quite a dramatic, quite a forceful showing of economic power, quite a demonstration of economic power.

Mr. Barton: I don't know about economic power. Your Honor. If you will recall the percentage of sales—in other words, the sales picture, the national sales picture of Anheuser-Busch, as compared to these three St. Louis competitors was about equal, it was 7 to 5.

Hearing Examiner Hier: Nationally I am not talking about.

Mr. Barton: That is a question of power, Your Honor. This is not the picture of a dominant company with no local competitor, as in the Muller case, or the Puerto Rican case, this is the picture of substantial companies, all of them, who all have the predominant part of their business outside of St. (294) Louis.

other words, Griesedieck-Western, Griesedieck Brothers, Falstaff, all testified, and the figures show that -I think the biggest one was Griesedieck-Western, who had 35 per cent of their business in St. Louis, the rest of them had less than that, this was just one market in which all of them did business. And I submit to Your Honor that the figures which are demonstrated on Respondent's Exhibit 3 showing the-or Respondent's Exhibit 18-which show the changes in market position in St. Louis of these companies doesn't lead merely to the conclusion that the fact that any company for a short period had 38 per cent of the market was evidence of a tendency to monopoly. Griesedieck-Western had that kind of a percentage for five years, as the result of an acquisition. Certainly you can't conclude that that was a tendency to monopoly. These market shares change. They are eaten away by advertising, by a superior sales promotion program of a conpetitor. And I submit to Your Honor that the effects, that the result that Anhenser-Busch raised its percentage from

12 to—momentarily from 12 to 38 per cent—is not prima facie, even, evidence of a tendency to monopoly.

Now, if Your Honor please, I would like to comment on that point later, but I just want to point out now that this question, this evidence of increased market share resulting from a reduction in price in a territorial case has not been (295) determinative, or not been alluded to in any of the cases which have there to be an illegal territorial price discrimination.

There was a general increase by General Foods in their market position, a very substantial one. When they started, they had between 25 and 50 per cent of the western market, as compared here to Anheuser-Busch having 12 per cent of the packaged sales in St. Louis. And the Examiner there dismissed the complaint at the end of the Commission's case, and was affirmed by the Commission, with full discussion in the opinion of this market problem by Commissioner Mead, and the majority concluded that that was not important.

Hearing Examiner Hier: I gather the impression from this record. Mr. Barton, that competition in beer sales was perhaps as keen in St. Louis County, as it could have been anywhere in the United States, because of the national roots of the majority of the populace there, their keen appreciation of beer, and their liking for beer, and also that perhaps they are quite price conscious. Do you agree with that?

Mr. Barton: I think those two points are true.

Hearing Examiner Hier: That is one of the things that impresses me about this price business.

Mr. Barton: You might note that St. Louis is one of the cheapest beer markets in the country.

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Hearing Examiner Hier: That is one of the things that (296) impresses me very markedly about this price foray experiment, or what have you.

Mr. Barton: I prefer to call it an experiment, Your Honor.

Hearing Examiner Hier: If they can in that type of locality treble their share of the market in a period of nine months against that kind of competition, to me that is quite impressive.

I must say this to you. You are unfortunate in what was not your selection, you are unfortunate in the selection of the Examiner to sit in this case. I do not agree with the General Foods decision. I am bound to follow it—and I will follow it in so far as the facts are the same—but I don't agree with it.

So you have got that hill to get over, too.

Mr. Barton: I would like to point out to Your Honor that this so-called capture of the market, that Anheuser-Busch went up to 38 per cent of the market immediately after the price reduction. The figures, if you will note, in July of 1954—that is Respondent's Exhibit 18—

Hearing Examiner Hier: Which column are you on? Mr. Barton: Anheuser-Busch, first column, 1954, the statistical share of the total. In other words, Anheuser-Busch went up immediately—it was an overnight rise to 37.6, actually.

(297) Now, that stayed about that percentage for July. August, and September. Then you will note in October 35.7, November 34.1, and in December they had the good advertising program, and it went back.

In January it was 33.2. And then February, of course, was the month of the loading, the announced price in-

creases by all the St. Louis brewers except, I believe, Griesedieck Brothers, who didn't announce until March. But the February period was a period of loading. So it is not a fair test.

But the lesson in those figures show that there was no gradual accretion of market, it was just an immediate testing by a number of consumers, then competition started at the same price, mind you, snipping away at that medium increase which Anheuser-Busch had. In other words, to no more than Griesedieck-Western had had for five years. And, incidentally, to no more than Falstaff, according to Exhibit 18, obtained immediately after Anheuser-Busch's price went back.

You will note in April of 1955 Falstaff had 37.5; in May, 37.7; in June 37.7; and in July, 38.4.

Now, does Falstaff's percentage of that market show a tendency to monopoly on the part of Falstaff? Does Griesedieck-Western's share of over 40 per cent of that market over a five-year period show a tendency to monopoly?

I submit to Your Honor that these percentages of 37 to 38 which Anheuser-Busch had for that limited period did not (298) create a tendency to monopoly in the light of the established market positions which the leaders in sales in St. Louis had over an extended period. This isn't the picture of an industry in which there were a number of competitors, each of whom had 10 or 11 per cent, and they had that for many years, and one of them sky-rocketed to 30 or 40 per cent. In that kind of a situation—that is one situation.

This is different, I submit to you, this situation here where it is usually for the market leader in St. Louis to

have about 35 per cent of the sales. It was true in the case of Griesedieck-Western, it is true in the case of Falstaff now.

Hearing Examiner Hier: It only was usual for a few years, though, due to acquisitions.

Mr. Barton: This is from 1948 now to 1955, and repeal was in 1933. I think you have to say that it is a rather usual situation, that the beer industry in St. Louis is such that the market leader is going to have around 35 per cent of the market.

Hearing Examiner Hier: There isn't any use in belaboring the point, Mr. Barton. This case is not similar to the other six in that respect.

Mr. Barton: It certainly is not.

Hearing Examiner Hier: Maybe he has a case that is factually similar, I don't know of any.

(299) Mr. Barton: Let me go to the discrimination point, Your Honor. You asked me if we were serious about discrimination. I think I should point out to Your Honor what is evident from the complaint, that they are not complaining here about a mere difference in price between the price at which beer is sold in St. Louis, and it is sold in Washington, D. C. That has existed for years. It grows out of the fact that there are these different beer markets where there are different costs, different taxes, different state and local regulations, different competitive situations.

And so the price is expected to be and is different from market to market. There is no evidence, certainly, that that differential caused any competitive injury, or could cause any competitive injury. Those differences have always existed, and will necessarily always exist.

So that since counsel couldn't show any injury resulting from these differences from area to area, he has charged discrimination based upon an alleged regularly established premium price for Budweiser substantially higher than the price of competing regional and local beers. And the contention apparently is that Anheuser cannot depart from that regularly established, alleged regularly established premium price in one market without simultaneously, and equally doing it in all markets at the same time.

Now, it follows from that that is necessary to prove (300) that there was a regularly established premium price for Budweiser over these regional and local beers. If it is not proved, I submit to Your Honor that a key point in commsel's case is not established.

Hearing Examiner Hier: Now, are you contending that he must establish that that differential is the same everywhere, or simply that there is a differential, whether it be a half cent, or 40 cents?

Mr. Barton: I think he has to prove under the complaint that it is approximately the same. I think that is the theory of it. What sense would it be that there would be a differential of one cent in one place and fifty cents in another place, and an order saying you had to maintain the differential? It gets into all kinds of difficulties, Your Honor can readily see.

Hearing Examiner Hier: Make a note of that, I want to hear from you on that point.

Mr. Barton: Now, what is the evidence on this regulary-established premium price point? Hallquist was testifying, you recall, and he testified that each market was different. He testified that the differentials between Budweiser and the competing beers at that price, retailer level,

existed in some places, didn't exist in others, and where it did exist it varied from one cent to \$1.22.

He pointed out that at the consumer level there was (301)—even more variety in this differential, and that in Philadelphia, for example, there were more than a thousand bars, in a survey that was taken in 1954, that sold all beers at the same price, whereas 500 of them had a nickel differential for Budweiser over some other brands.

Hearing Examiner Hier: You are talking about packaged drinks?

Mr. Barton: I am talking about over-the-bar sales. That is for over-the-bar.

Hearing Examiner Hier: What about your packaged beer? Isn't it a fact that Budweiser does command a premium price in some amount over non-nationally distributed beers in every market?

Mr. Barton: No, Your Honor, not in every market. Hearing Examiner Hier: I am speaking of Palst. Miller's, Schlitz, Blatz—over the local beers, but it does not command a premium price of packaged beers.

Mr. Barton: What do you mean by "local beers"!

Hearing Examiner Hier: I am talking about been that is sold in less than 48 states in the United States, local, regional, call it what you want, but less than 48.

Mr. Barton: I don't think that is true generally. It isn't true always, certainly, Your Honor.

The point is that there are beers such as Cor's—they are regional beers, really—they have an acceptance a (302) pricing policy that will vary from area to area and in many areas their price is above Budweiser, as matter of fact. That is what the witness Hallquist was testifying to. That is what this study shows.

Hearing Examiner Hier: Packaged.

Mr. Barton: Their price to the retailer. And therefere the price in the off-premises market would reflect that situation of the price to retailer pricing.

Now, the witness Hallquist was testifying that there was no regularly established differential, there had never been, and there isn't now. It is clear. As a matter of fact, you recall that he said he based it not only on his general knowledge, but on a survey which had been made in March 1954 of various areas in the country. A copy of that survey was introduced in evidence.

You recall that when I asked Your Honor to receive the offer in evidence, the results of that survey, as I recall it—

Hearing Examiner Hier: I told you it wasn't necessary to corroborate a witness, unless he has been disproved.

Mr. Barton: And as I recall it, your statement was that the gentleman had stated that.

Now, what did these others testify to? They said, Meurer, Ens. Sewing—

Hearing Examiner Hier: I remember what they (303) isstified to.

Mr. Barton: All they testified to was the relationship of Budweiser to their own brand, nothing about Budweiser in relation to Hamm's, Cor's, and other brands.

Moreover, they didn't say there was any regularly established differential between-

Hearing Examiner Hier: That is all that Hallquist was denying, that there was a regularly established differential, he did not deny that there was a differential at times in some places.

Mr. Barton: Quite true.

Hearing Examiner Hier: And that is what I take this record to reveal, that there is a differential.

Mr. Barton: We concede that in some markets there is a differential, in others, there it is not. And where there is a differential it varies from nothing to one cent to \$1.22. That is the statement in the record, that is the fact.

Hearing Examiner Hier: Of course you have to add that what you don't mention, namely, that Budweiser does advertise that it is a premium priced beer.

Mr. Barton: Well, most beers, as you know—and I think there is a concession on the record—advertise that they are premium beers.

Hearing Examiner Hier: I am talking about premiumpriced beers.

(304) Mr. Barton: And the distinction between advertising premium beers and premium-priced beers is small, indeed.

The important point in the advertisement is "premium". Otherwise, why would Falstaff, Griesedieck Brethers, Griesedieck-Western, prominently display "premium" in all of their advertisements?

Isn't it clear that the important word in that advertisement is "premium"?

(305) Hearing Examiner Hier: I don't think so. But that is a matter of argument and inference.

Mr. Barton: Now, let's go to the injury to competitive point. And we submit to you that counsel has not established any injury to competition in this case. What is the statutory language?

Hearing Examiner Hier: You have laid out each of of these compétitors very fully in your brief, and I went

over this thing very earefully from one o'clock to six o'clock yesterday. I don't think it is important. I want to hear what he says to all of this.

Mr. Barton: Do you want to let him talk?

Hearing Examiner Hier: If I want any more from you, I will ask you for it.

Mr. Mayer: In other words, I take it that Mr. Barton is through unless you call on him again?

Mr. Barton: I want to reserve -

Hearing Examiner Hier: We will get to that point later, Mr. Mayer. Take up the points he has made in his brief. First of all, take up the discrimination point. Is it discrimination in price, dropping from a so-called premium level to an ordinary level?

Mr. Mayer: It is, sir.

May I have Respondent's Exhibit 14? There is a discrepancy between what I have and what is in the record here.

(306) I think at the outset, to keep the case in the proper perspective, that we might look at the St. Louis market at the close of business in December of 1953. It portrays a rather interesting picture.

The national leading seller, Budweiser, ranked fourth in the whole market, with a national share of the market of 7.8 per cent, and total assets of approximately \$165 million. Falstaff, a competitor, was second in the St. Louis market for the year of 1953, ranking sixth nationally, with a 3.38 per cent of the national market, and assets of approximately \$.2 million. Griesedieck Western was the leader in the market for 1953. It ranked thirteenth nationally, and it had a 1.7 per cent share of the national market. Its total assets were approximately \$16 million.

Griesedieck Brothers, while third in sales in the 8t. Louis area, ranked 29th nationally, and commanded this tenths of one per cent of the national beer market.

Now, subsequent to the January price reduction, the market position changed somewhat. Griesedieck Western was first, Falstaff was second, Budweiser was third, and Griesedieck Brothers was fourth. We have already heard the explanation from the nation's leading seller that there was no effort made to influence the consumer price for this particular price reduction, and therefore it is reflected fittle in the over-all sales figures in the area. Not so,

(30 After the June reduction, however, Budweiser immediately becomes No. 1 in this area, Falstaff No. 2, Græsedieck Western third, and Græsedieck Brothers fourth.

Now, looking at the picture after Budweiser increases its price, in March of 1955, at that time, prior to the inerease, Budweiser was still first, Falstaff was second. Griesedieck Western third, and Griesedieck Brothers fourth in the St. Louis market.

Subsequent to the price increase in March, Falstaff becomes No. 1, Griesedieck Western No. 2, Anheuser-Busch No. 3, and Griesedieck Brothers No. 4, which discloses, as was pointed out by the attorneys for the respondent, that Budweiser increased its market share of approximately 6 or 7 per cent, and retained that—or, that is the amount retained—after the price increase was put into effect by Anheuser-Busch.

I think the significant figures ought to contrast the months of April, May and June in market share with the months of May, June and July of 1953. There was no price reduction in the months of April, May and June and July of 1955, and the market share figures range from a high

of 12.8 to a low of 12.1 during those four months in 1953, and in 1955 to a high of 21.9 to a low of 19.0.

There are some rather significant figures, I think, that are being overlooked, at least to this point. It is rather interesting to comment that by virtue of this price reduction, (308) in only six months of 1954 Anheuser-Busch sold more than twice as much—their sales doubled in 1954 as opposed to 1953, and their gain in 1954 is more than their total sales in this area in 1953.

Now, I think we should look at the figures on Respondent's Exhibit 18. And while I am using these figures, and accept them, I think it is interesting to note that the original set of figures submitted by Anheuser-Busch and which were a part of this record, disclose that Anheuser-Busch's share prior to preparation of this document submitted by Anheuser-Busch got as high as 40 per cent of the market, rather than the 38 per cent it shows here.

It also shows on an over-all market basis a figure of 42 per cent market share in St. Louis, rather than any of the figures which show upon this particular exhibit.

Examining the sales of the Falstaff Company, I think it is well to point out that the figure showing the sales of Falstaff show a constant increase in the St. Louis market from the month of February, 1953, to and including the month of June, 1954, and then for the first time a minus figure appears on the tabulation, denoting that the sales are off in relation to the preceding year's sales, and that continues, except for the extraordinary month of February—as the respondents have pointed out as being extraordinary—that continues for every month in which the price reduction is in effect.

(309) Hearing Examiner Hier: Do you still contend that there was any permanent taking away of business?

Mr. Mayer: I am going to maintain that there was some permanent switching, but there was a permanent effect on this price discrimination.

Hearing Examiner Hier: Do you consider it to be appreciable?

Mr. Mayer: Perhaps not appreciable in the switching, the actual switching from one brand to another.

Hearing Examiner Hier: You are relying mainly on the potentialities involved?

Mr. Mayer: Yes, sir.

Hearing Examiner Hier: I would think so, I don't see much else involved.

Mr. Mayer: I would like for you to get the perspective. I appreciate the loss of sales, and the rest, but I think we ought to look at this in the lights of the nation's No. 13 and No. 29 seller of beer in the nation.

Hearing Examiner Hier: Isn't your position this—Their point is this: that unlike the other six territorial price discrimination cases, this is not the case of a big dog in a particular locality trying to gobble up one or two small local dogs. And your answer to that is that nationally it is the big dog, that the three strongly entrenched local competitors were not very strong nationally? Is that your answer to (310) it, in capsule form?

Mr. Mayer: Yes, sir.

Hearing Examiner Hier: But you do concede, do you not, that the three local competitors—Falstaff, Griesedieck Western and Griesedieck Brothers—are far more strongly entrenched, competitively speaking, than was Mr. Moore out in—where was it, Arizona, New Mexico—or this chap out here in the pectin business in Washington, and the other cases, such as the Puerto Rican Tobacco case?

Mr. Mayer: If it is based upon the relative market share of the competing breweries, their market share in the St. Louis market is greater than the market shares of the various sellers to which you have alluded. I am not sure about the market share of this pectin seller up in Seattle, exactly.

Hearing Examiner Hier: What I mean is-

Mr. Mayer: Of course, every individual market share, regardless of its size, is important to the competitor, as a it is important to Anheuser-Busch.

Hearing Examiner Hier: This business, though, is pretty well entrenched over a regional area?

Mr. Mayer: Yes, sir.

Hearing Examiner Hier: And they were suffering financial handicaps in conducting their business, as far as I know from this record; is that right? I mean, none of them (311) were in failing circumstances by any means.

Mr. Mayer: Except for a major loss of sales in a major market for every one of these competitors.

Hearing Examiner Hier: I understand that. But they could have lost every case of beer in St. Louis, all three of them, and still not gone bankrupt; is that not correct!

Mr. Mayer: I wouldn't agree to that; that would be pure conjecture. And besides, one of these companies does 35 per cent of its business in St. Louis; it certainly is a major market for all three of these competitors.

Anheuser-Busch can't go into a central market with 35 per cent. This is a major market for these competing sellers. They don't have 95 markets with a 5 per cent share in each to make up this business loss in St. Louis.

Hearing Examiner Hier: I understand your point.

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Go ahead. I am sorry I interrupted you. But a seems to me only fair that I should annoy you as much as I have annoyed Mr. Barton. Go on. s

Mr. Mayer: I think it is interesting to recall that the testimony of Mr. Meurer on the relationship of the Bud weiser price reduction and the loss in sales of the Falstaff Company—I believe his answer to the Examiner's searching question was that he couldn't think of any other factor that was involved in this loss of sales but price, I think that is a fair characterization of his statement.

(312) And I think that is going to become more important as we go along. I think these figures show a very effective way, for instance, for a competitor to put a lid on the increased sales of another competitor. It shows the nation's leading seller by a price reduction maintaining Falstaff, keeping them from the normal increase which this market had shown there they were gaining at that time

A think it is pertinent that the nation's leading seller was increasing its sales in the St. Louis market prior to this price reduction. I think, too, that the projection of Mr. Meurer was extremely accurate, and in my opinion discloses not only a last engales to the price reduction, but certainly offering a tremendous number of cases in his projection for the months of July, August, made prior to any sprice reduction being announced by Anhenser-Busch.

Now, I think, proceeding on Respondent's Exhibit 1s, we should comment somewhat on the Griesedieck Brothers Company, Admittedly the tabulation shows that the Griese dieck company was suffering losses in sales. And it was also suffering a loss in market share prior to Anheuser-Busch's price reduction.

However, the greatest loss in the preceding 18 months to the price reduction by the No. 1 seller in the nation was a 24.8 per cent loss of sales. Subsequent to the price reduction the decline ranges from 30.5 to 55.6 per cent.

Laring Examiner Hier: You are talking about (313) Griesedieck Brothers or Griesedieck-Western!

Mr. Mayer: I am sorry, Griesedieck Brothers is what I am talking about, they are the third set of figures on the exhibit.

The testimony of Mr. Ens, the sales manager of this company, said that the sharp decrease was due in large part to the Anheuser-Busch price reduction. What more could an honest man say when his figures showed already a loss in sales, but certainly accelerated by the price reduction of Anheuser-Busch?

It also shows that whereas in the year 1953, before the prices were reduced, or this market disrupted by Anheuser-Busch, the market share of the Griesedieck Brothers was 14.4 per cent, and after the market disruption the over-all market share falls to 10.2 per cent.

I think it is perhaps a little more graphic, however, to examine the month-by-month sales of the Griesedieck Brothers company in relation to the date of the price reduction of Budweiser. In the first five months of 1954 the loss in sales to the Griesedieck Brothers company was 70,515 cases. Subsequent to the price discrimination by Anheuser-Busch in June, the seven months' loss was 423,418 cases, quite a remarkable acceleration, coincidentally, about the time of the nation's leading seller's price reduction.

Hearing Examiner Hier: Without going into all these figures, your point, in substance, is that—if Mr. Barton

(314) is correct that Griesedieck-Western was already falling down the stairs, your claim is that Anhenser Busch was standing on the landing and gave them a further had, is that it?

Mr. Mayer: Yes.

Hearing Examiner Hier: There is no use in going into all these figures, I spent all afternoon yesterday going aver them.

What do you say about this discrimination?

Mr. Mayer: May I comment first on this, and then I will be glad to discuss it.

We have heard a great deal today about the sale economic plight of the nation's leading seller, and I think in the light of the economic situation in which Anderser Busch found itself, we should consider for a moment the situation that you have just described. Here in St. Louis and St. Louis County, which provides them anajor market for their distribution, are three sellers classified by the witness Hallquist as regional sellers, Griesedieck Brothers and Griesedieck-Western. On an over-all basis, in 125 they ranked thirteenth and twenty ninth, and their succombined won't come to one-half the sale of Anderse Busch.

They were faced with a loss in sales. Like Anhead Busch, perhaps with less than 19 vice presidents, but her theless with the personnel available to them they summaries, they make checks, they make plans to arrest decline (315) in sales. They explore all possibilities maybe without the resources of different sheel continues and different brands of beer. But all the resources available to them, to arrest their sales losses in this important match in their distribution.

Now, how many legitimate plans and lawful ideas went out the window when, Boom! on the 21st of June Budwelser dropped its price!

They weren't hurried off the landing, described by the Examiner, they were belted off the landing described by the Examiner.

And it is interesting to note by virtue of its own advertising that Budweis r became the nation's leading seller in 1953 without resorting to this type of pricing in any market in the United States.

Now, I'll admit Budweiser's problems economically are gigantic, because it is a gigantic company. But how insignificant do they become when you compare this little strategm of price reduction to the economic situation that Griesedieck-Western and Griesedieck Brothers found themselves in when this price cut was made?

I think another potential of this price reduction that hasn't been emphasized is the sudden reduction below cost and sale of Budweiser by a supermarket.

Hearing Examiner Hier: Below cost?

(M6) Mr. Mayer: Yes.

Heaving Examiner Hier: You mean the cost of acquisition by that Schenberg outfit?

Mr. Mayor: Yes, sir. There are two instances—at least one—in which the supermarket Sold the premium-priced bulkelser at less than the ordinary price.

Hearing Examiner Hier: It was \$2.29, wasn't it!

Mr. Mayer: \$2.20.

Now, this was not in the Budweiser scheme of things. The quote is, "We made every effort to discourage this", but it shows an inherent tendency to lower the price, because the small retailers were—it shows the tendency to

reduce the price to the retailer, he couldn't afford it. And this situation of the nation's leading seller selling below cost at a loss in this particular area merely demonstrates the potentiality of a reduction of a nationally advertised beer being sold at premium prices.

I think, too, not to bore you with figures, they are all here for us to examine, but the Griesedieck Brothers dropped to an all-time low, for instance, while at the same time attempting to arrest their loss of sales subsequent to Budweiser's price reduction, they dropped to an all-time low in the St. Louis market. And that, in my opinion, represents the permanent injury and the permanent damage done to the competitors by Anheuser-Busch in this St. Louis area, although (317) on an over-all broad basis our argument is based primarily on the potentialities of injury resulting from this type of pricing. Respondent admits that it instituted this to secure a larger market share, so I think we won't have too much difficulty in this case and I think it is extremely important in showing a causal connection between the Budweiser price reduction and the loss in sales, the actual loss in sales of the various competitors in this area.

Hearing Examiner Hier: Do you ascribe any punitive motives to this price flurry or raid or foray, or whatever you want to call it?

Mr. Mayer: Other than that a man has to presume. I guess, or to foresee the natural and probable causes of his argument. This record does not disclose it.

Hearing Examiner Hier: Do you claim the statutory effect on competition as a result of the first drop in precfrom \$2.93 to \$2.68 on January 4, 1954?

Mr. Mayer: No, the price discrimination is charged in the May 1952 reduction of prices resulting ultimately in the drop in prices on top of the competitors' prices in St. Louis.

Hearing Examiner Hier: What is this discrimination? Answer me that point.

Mr. Mayer: First of all, would you mind asking me the question again about just what you want to know about it. (318) sir?

Hearing Examiner Hier: Mr. Barton says, if I understand correctly, that there isn't any discrimination as the statute provides here, because your case is founded on Budweiser selling at a premium price, not a given premium price particularly, but a regularly established premium price.

There has been no witness in this case, if I recall correctly, that said there was a regularly established premium price. They did say that Budweiser sold at a premium, which premium varied in various markets. What do you say about that as a legal proposition?

Mr. Mayer: The complaint does not intend to allege that there is a constant regularly established differential existing between Budweiser and the price of other beers in all markets at the same time. The regularly established price means that those prices were established by Budweiser in the normal and regular course of its business.

Hearing Examiner Hier: Differentials over what? Mr. Mayer: Over local and regional beer prices.

Hearing Examiner Hier: And your contention is that there is such a differential established by Budweiser in every market in the United States over local beers therein selling: is that right?

Mr. Mayer: Generally speaking, there obviously are going to be, in some markets somewhere, instances in which the (319) prices are the same.

Hearing Examiner Hier: And you aren't talking about the price of Budweiser when sold to the retailer? Or is that the price you are talking about?

Mr. Mayer: That is the price I am talking about.

Hearing Examiner Hier: I don't believe this record reflects whether or not the wholesaler was required to charge a price fixed by Budweiser in his resale to the retailer.

Mr. Mayer: It does not, it merely contains the price sold to the wholesalers by Budweiser.

Hearing Examiner Hier: You must mean in the case of wholesalers that first price.

Mr. Mayer: Yes, sir; and in the case of the retailer, the wholly owned branches, the 18 examples set forth in the record showing the different prices to the different retailers as compared with the price to the retailer in 8t Louis, Missouri.

Hearing Examiner Hier: Then your case gets down to this, does it not, that Budweiser charged a premium of X amount, unknown amount, in Louisville, we will say that is close to St. Louis. And it did in St. Louis in 1953. And in January of 1954, and subsequently in June of 1954, it cut its price in St. Louis, but did not in Louisville.

And thereby you say it discriminated against its customers in Louisville in favor of its customers in St. Louis (320). And by such discrimination diverted business from its competitors, whoever they might be, dealing in St. Louis

Mr. Mayer: That is right, sir.

Hearing Examiner Hier: That is his contention.

The discriminees, the people who are discriminated against, are the retailers in Louisville, is that right?

Mr. Mayer: That is right.

Hearing Examiner Hier: They were not injured!

Mr. Mayer: No, sir. The discrimination is between the customers of Budweiser, with the causal effects of flowing in injury to the competitors of Budweiser.

Hearing Examiner Hier: I know it is a first-line injury case, but I just wanted to probe a little further.

Mr. Mayer: If I may, Mr. Examiner, I would like to comment for a moment or two on what I think is a misconception of the law. And I think it is well to point out that in this record we urge that the Examiner is, practically speaking, compelled to find a causal connection between the Budweiser price reduction in June, and the loss in sales of its competitor subsequent to that price reduction in St. Louis.

Hearing Examiner Hier: You say a causal connection, you do not claim it is the sole?

Mr. Mayer: I would say certainly the major causal connection; there might be others, but in the opinion of the witness from Falstaff—I can't think of any other factors (321) he said—and I would like to point this out. There is no decided case in the courts or before this Commission where the causal connection between the price discrimination and loss of sales was established in which an order was not issued, or a judgment rendered. And the converse of that is true, that there is no decided case in which a causal connection has been established that has ever been dismissed.

Hearing Examiner Hier: Do you agree with counsel that they are only six cases in point!

Mr. Mayer: That is approximately right, yes, on the pure idea of area price discrimination, yes, sir.

For instance, there is a distinguishing feature between the General Foods decision and the Purex, which seems to be relied upon pretty heavily by the respondent. The majority opinion in General Foods is based in the perhaps last five or six paragraphs of Judge Gwynne's opinion, in which he states:

> "One, the primary competitor increases its sales; two, the secondary competitor increased its sales; and three, I cannot find any causal connection between the competitor going out of business in Seattle and General Foods' price discrimination."

That is the entire tenor of the Purex decision, with which I happen to be somewhat more than a little familiar. The Examiner cannot find any causal connection between the (322) Purex deals and a loss in sales by competitors

Hearing Examiner Hier: Could you, when you went over that record?

Mr. Mayer: That is not my ease at the moment.

Hearing Examiner Hier: That is not a fair question Skip it. I just wondered.

Mr. Mayer: But I just emphasize that when a causal connection has been established, orders have been issued

Hearing Examiner Hier: There is no use in belaboring that point, either. I am satisfied on this record as it presently stands, gentlemen, that this price dropping of Anheuser-Busch on its Budweiser beer is certainly a major contributing cause to the loss of sales in the St. Louis market.

I don't say it was only that cause.

Mr. Barton: May I be heard on that, Your P.

Hearing Examiner Hier: We will get around to the in a moment. I am saying that you needn't belaber the point; you can but it around all you please later, but y needn't go into that, I am satisfied with this tentative at least.

Go on, take the next one.

Mr. Mayer: I merely wanted to conclude with read from respondent's brief, not to belabor the idea, but it paragraph four on page 37. And I won't read it now full, but I wish to stress:

(323) "The lower price is of no consequence the determination of the injury question. For ample, in Puerto Rican, as well as in Mead, neith the volume of the increase in sales nor the perce age increase in the share of the market was advert to in the opinion. On the other hand, in both Purand General Foods, respondent's share of either thocal or national market, or both, was shown to in increased."

But again I wish to point out, as this brief fails to no that in those cases there was no loss in sales which con be attributed to the price discrimination.

I think that is all I have, Mr. Examiner.

Hearing Examiner Hier: I don't quite agree with y in the General Foods case. I think there was a loss sales, and I shink there was a causal connection there. I: the Commission—ad not, and I am bound by that.

Mr. Barton, there was one thing I want to ask you be fore you get started in belaboring that point again. A benser Busch's case was issued by this Commission as a landaunt right on the beels of the General Foods, a

That, to me, is very persuasive; that, one, they thought they were plowing new grounds, not the ground of the six cases that have been mentioned; two, that they must have throughout an inquiry, full-dress inquiry into this particular situation, that such an inquiry was warranted, in spite of the facts, of (324) the points that you have made in your brief, that it is not the big dog locally, I mean the big dog locally or nationally, running out the small fellow.

Mr. Barton: It couldn't be, as Your Honor recognizes. Hearing Examiner Hier: And certainly other distinctions which you have drawn there, which I think are, in the main, valid. They must have thought that. You are, perhaps, aware—I don't know whether you are or not

that this presently sitting Commission—I mean, as of the last five days, frowns on motions to dismiss at the close of the government's case.

I will grant you that at the time this complaint was issued, that might not have been the situation, whether it is or not.

Mr. Barton: Certainly they had affirmed a number that had been granted.

Hearing Examiner Hier: That was by a different Conemission.

Now, you go on with your argument.

Mr. Barton: Your Honor, I point out on that subject. I don't know why the Commission issues complaints. Of course, it is public knowledge that it usually issues complaint when someone complains and files some kind of papers, at that it is one avenue of complaint being issued.

But I would point out to Your Honor that it seems a (325)—needless waste of time for all concerned to go on to

further hearings if the fact is that on this record government counsel has failed to make a prima facie case, whether on the price discrimination point, or the injury to competition point.

Now, I would point out to Your Honor on this price discrimination point just briefly that there is no evidence in the record, and indeed it is not a fact, that there is any kind of similarity of differential in the various markets between Budweiser and the brands which are competing with Budweiser, call them regional or local—incidentally, those terms are undefined in the complaint, and they are practically undefinable. But, whatever we decide to define them as, there is no kind of a regular differential.

Hearing Examiner Hier: Need there be?

Mr. Barton: I think there need be, Your Honor, for this reason. How could Anheuser-Busch—suppose at the end of the case we find that there was a discrimination, and you issue an order, and you say, you shall not discriminate. Obviously there should not be on this record that Anheuse: Busch had to charge the same price in Washington, D. C., as it charged in St. Louis. They are not complaining of that.

Hearing Examiner Hier: I was going to get to that point later on.

If I deny this motion, Mr. Mayer, you are going to have to do some thinking about that order. I am certainly not (326) going to be a party to the Robinson-Patman Act being used to enforce cement to solidify a premium price. It is impossible to enforce it. I don't see how you can do it. But that is a few steps down the line.

Mr. Barton: I don't think that is the major issue here, because I think on the record there is a failure of proof so far as the effect on competition is concerned.

Let's go through this matter on the effect of competition of the various brewers in St. Louis.

As Your Honor pointed out, these brewers are all regional, at least they all sell over a wide area. They idle sell the major part of their production outside St. Louis. I note that none of them testified that they lost accounts as a result of this. Your Honor remembers in questioning, one of the witnesses he corrected your question in his are swer, when you referred to lost accounts, he said, 'SWe didn't lose any accounts'.

Hearing Examiner Hier: I don't think that is too important, business.

Mr. Barton: That is right. Everybody has a full-blown distribution system in St. Louis. They retained it throughout the period of their competition by Budweiser, they had it when the price reduction was rescinded.

Now, I want to point out further that in the case of each one of the St. Louis competitors there are other reasons, (327) major reasons for this drop-off in sales, in addition to the price reduction.

Let's take them up one by one.

Rearing Examiner Hier: You can go over them if you want to.

Mr. Barton: I just want to make sure that my point is understood—I am sure it is—but I want to make sure that it is completely understood.

First of all, let's take the over-all St. Louis picture. The net effect of the price reduction by Budweiser in St. Louis is that for the first time in ten years the market was opened up so that the outsiders could get any kind of a respectable share of the market. In other words, all

others claimed from something like 4.8, which they had in 1953, and had had for six or seven years since the merger process had taken place, to around 7 per cent after the dust settled in 1955.

And now, I say to you, Your Honor, that is a desirable development in competition in the St. Louis market.

Hearing Examiner Hier: Are you telling me that Schlitz climbed?

Mr. Barton: As a matter of fact, yes.

Hearing Examiner Hier: It maintained its differential and did still climb?

Mr. Barton: It got into the market more in that (328) period. Now, the figures are not in the record, so far as Schlitz are concerned, except their business in the 905 store. And if you will recall, Schlitz sold more in 1954 in St. Louis than it sold in 1953.

Hearing Examiner Hier: At a premium?

Mr. Barton: No, the record doesn't say what it sold at. Hearing Examiner Hier: That is what I am wondering. It would be very interesting to find out that, whether Schlitz maintained its premium or not, and increased. There is something funny about that price differential situation down there, and that is a fact.

Mr. Barton: The other thing to know is that when Weissman testified, he testified that five out of the seven brands he handled—

Hearing Examiner Hier: Yes, I remember.

Mr. Barton': —increased in 1954 over 1953, and Anhenser was the other brand.

Hearing Examiner Hier: His testimony isn't detailed enough to know on what price behavior they increased.

Mr. Barton: Certainly, in so far as he testified to 905, he testified to the buying price.

Hearing Examiner Hier: That was a house brand, any how.

Mr. Barton: Well, it is a brewery brand, private brand label, but he testified to the price of laid in cost, (329) and it was comparable to the price of of or beer in the St. Louis area, somewhat lower, I think

But in any event, the net effect of this price reductor after it was all over was that the St. Louis market was more competitive than it had been for ten years previously And I submit to Your Honor that in a Robinson Patnas case, where you are asking the question of effect on competition, that is a salient, important point to take into account.

(330) Hearing Examiner Hier: Let's stop right there, Mr. Barton. I have been listening to that all week out in Chicago in another case. I grant you that when you get down to prognostication about what the effect may be, whether it will lessen competition substantially or tend to create a monopoly, and so forth and so on, the Commission is required by law, and consequently we also, to prognosticate and look forward where there has been no actual experience.

In a situation where you have had years of actual experience with a volume discount or quantity discount or cumulative discount, or something of that sort, the best evidence of what will happen, perhaps, is what has happened while that has been in force. But that has to be in force and operative in the market for a large number of years.

I can't say in this case that nine months is enough to prognosticate what would happen if this price theory or experiment was continuing down to the present day.

Mr. Barton: Your Honor, as a practical matter, I think the figures pretty well indicate that the percentage sales of Budweiser were going down, in eight months they were going down. Now, how far they would have gone down I don't know. That is purely speculative,

But it certainly doesn't warrant the conclusion which the Government is seeking to put on it, that they captured 40 per cent of the market and retained it—and would have (331) retained it indefinitely—because it just isn't true.

Hearing Examiner Hier: That is the point exactly. He is demonstrating that they do capture, they had the economic power, the advertising resources and ability and ingenuity and imagination, and what have you, to capture it.

Now, whether they could have retained it or not, I am left to guess. I don't know.

Mr. Barton: I don't think you are left entirely, Your Honor, because the figures show that in the six months' period they didn't gain, they lost from 38 to 33.

Hearing Examiner Hier: Yes, they have been a little off, and gone back up, too. You can't put your finger on that, really.

Mr. Barton: Your Honor, if these figures on the beer market for ten years in St. Louis show anything, they show a market where there is great flexibility. One beer may have a good advertising program one year and shoot right up; next year it has a poor run of beer, it goes down. I want to get to that in connection with these other competitors, because I think that is in the picture here, and Your Eonor shouldn't overlook it.

Hearing Examiner Hier: Let's take GW, for example They were sliding.

Mr. Barton: They were sliding, and sliding body When Mr. Sewing was on the stand, he was asked whether the (332) trend had any part in his reduction of size, and he said there was a slight trend running against 6W prior to the price reduction. But I submit to Year Honor that the record here discloses that he was somewhat less than candid in characterizing it as slight.

Hearing Examiner Hier: That may be true.

Mr. Barton: In fact, GW was dropping, sometimes to such an extent that Smith testified they falsified their figures, which they were supplying to the national publication, in order to cover it up.

Hearing Examiner Hier: But your own figures show that they were dropping.

And after this price cut by Budweiser they didn't drop, they fell from 100-and-some-odd-thousand decrease to 400-and-some-odd-thousand; I can't remember exactly.

Mr. Barton: Your Honor, on a percentage basis-

Hearing Examiner Hier: I am not talking about percentage, but actual case counts.

Mr. Barton: All they showed is that they continued to drop. If you will look at Chart 1, you will note that their drop had been of such a nature that their position at the end of this period is approximately where it would have been had there been no price reduction. In other words, they are approximately where they would have been if their 1952 trend line had been continued without the price reduction.

(333) There has been no permanent market position changed there. The fact is, Griesedieck Western was going down rapidly, compared to its previous dominant position of over 40 per cent in the market.

Now, it is significant to me, Your Honor, that the only witness through whom Government counsel attempted to get anything in the record as to over-all injury was through Jones. You remember investment banker Jones!

Hearing Examiner Hier: I remember Jones getting mad at me for using him as an example, yes.

Mr. Barton: He got on the stand and said—apparently, he was saying that the Budweiser reduction in price had an effect upon their dividend declaration and the deduction of the dividend declaration.

Hearing Examiner Hier: You can forget that; I don't care to hear that. I am looking at sales. Too many factors enter into this dividend declaration to go into that.

Mr. Barton: I take it, then that there is no proof here, so far as we are concerned, of injury to competitors in the sense of injury to their ability to compete.

Hearing Examiner Hier: I wouldn't say that. Loss of sales certainly might injure them.

Mr. Barton: Well, as Your Honor pointed out, all of these competitors who have lost all of their St. Louis sales, their ability to compete was not impaired.

(334) Hearing Examiner Hier: In St. Louis County! It most certainly would be.

Mr. Barton: Let me point out, if they retained their customers, as they do-

Hearing Examiner Hier: They couldn't have lost all their sales if they retained their customers.

Mr. Barton: It is a purely academic question. The fact is that, as a practical matter, no reduction that An heuser-Busch makes could take away enough of the basiness of the St. Louis competitors to injure them.

And, what is more important, it is just not in the economic possibilities here that Anhenser-Busch could attempt to do what has been done in all of these cases where territorial price discrimination has been in effect, namely, to attempt to drive out the local competitors, then raise its price to take advantage of the effect of the discrimination. That just isn't in the cards here,

The fact is that Anheuser-Busch's reduction was solely to get more business at a time when they were falling off nationally, to try to even out the sales picture and get some answers to the question of what effect the reduction in price would have on sales.

They got those answers; they went up—incidentally, the differential is today 45 cents as compared to 58 cents, in fact it is 30 cents compared to 58 cents, but it is partly (335)—the result of the St. Louis competitors coming up in price after Anheuser-Busch went up in price, which is another point on this so-called maintenance of a regularly established differential, that the differential has changed not only by action of what Anheuser-Busch desbut by action of its competitors, as would be expected.

Now, so far as the Griesedieck Brothers is concerned, it is interesting to note—well, so far as Griesedieck Western is concerned, again, you will recall that they sold out at \$19.50, the highest price which the stock had been selling for back in 1953 before any price reduction.

So, there was no permanent—no injury to the company from any price reduction by Anheuser-Busch.

Now, let's take Griesedieck Brothers. In the first place, to lesselieck Brother's sales had been declining over a five-year period before 1954. They went from 18 per cent of the market in 1949 or 1950, to 14 per cent, as I recall it, in 1953. They lost no more in 1954 over 1953 than they had lost previously.

In other words, there were other factors that were present with regard to Griesedieck Brothers.

Hearing Examiner Hier: I don't follow that trend you make. You start with 1945, as I told you I would, and you get a fairly even trend for those years, for 1948 a precipitate dip of one-third, down to 12.3; some improvement in 1949; considerable (336) improvement in 1950; about the same in 1951; with the same in 1952; and then you have a 2-point or even 3-point dip in 1953. But they wind up in 1955 with only 7.36, whereas they—I am looking at your Table 1—

Mr. Barton: There was no price reduction in between 1952 and 1953.

Hearing Examiner Hier: No, but there certainly was one between—they declined 3 points, 3 percentage points, in that year, didn't they?

Mr. Barton: From 1953 to 1952?

Hearing Examiner Hier: Now, from 1953 to 1955 they declined 50 per cent, or 7 percentage points. It is his point again, his point again is that they were sliding, but you put a little grease on the rails.

Mr. Barton: Your Honor, the fact with regard to Griesedieck Brothers is that, as is pointed out in the brief, they lost more outside St. Louis than they lost in St. Louis. Now, if the reason for their loss was price, how can the outside St. Louis loss be explained?

Hearing Examiner Hier: It can be explained very simply, it seems to me, although it is not in this record. Maybe somebody cut the price outside of St. Louis somewhere; I don't know. It is not in this record.

Mr. Barton: It certainly isn't.

Hearing Examiner Hier: That is purely in the air.

(337) Mr. Barton: And the witness—if that had been the fact, he would have testified to it, too.

Hearing Examiner Hier: Not necessarily.

Mr. Barton: Certainly, Budweiser didn't cut outside of St. Louis.

Hearing Examiner Hier: You lawyers always have the habit—which I used to do, but which I detest as Hearing Examiner—of always avoiding the \$64,000 question and the \$32,000 question, and I don't always think of it, and so we are left in the air on it.

Mr. Barton: As I recall, you answered one of those \$64 questions. My colleague has stated to you several times that Meurer, the Falstaff witness, said he didn't know any reason why Falstaff lost in that case. Do you recall!

Hearing Examiner Hier: I don't recall.

Mr. Barton: Here is what Mr. Meurer testified. It was in answer to a question by Your Honor, on page 177 of the record:

"I would like to ask you this. I don't knew whether your experience qualifies you to answer, or maybe there isn't any answer. Is there anything reliable that I can go on to indicate what percentage of consumers are shifters, that is, who buy beer solely on a price basis without regard to brand or advertising or TV or any of the rest of the sales efforts?"

(338) He answered:

"I think that would be the \$64,000 question. I think we would give that to find out."

I submit to Your Honor that Meurer did not testify that price was the only basis for changing customers.

Hearing Examiner Hier: No, I don't think he testified to that. But I do think he inferred rather plainly that his loss of sales in the St. Louis area was due to the Budweiser price cut.

Mr. Barton: Well, Your Honor, he said that there was a temporary sampling by Budweiser customers, by Falstaff customers, but he cleverly limited it to temporary, because he had to.

As a matter of fact, if you look at the figures, Falstaff's sales in December of 1954 exceeded their budgeted sales for December, 1954—in other words, the budget they had cotten up the first part of the year—their position was good, they continued to sell a lot of beer, despite the fact that Anheuser-Busch was selling at the same price they were, and there certainly is no injury to competition so far as Falstaff is concerned.

I want to point out further with respect to Griesedieck Brothers that, as an exhibit in the record shows, Griesedieck Brothers changed its product in the early part of 1954. It is in Exhibit 24-A, a letter from Edward J. Griesedieck (339) to his co-workers.

Hearing Examiner Hier: Let's see it. I don't remember that one.

Oh, yes: "We don't contemplate-"

Mr. Barton: But that isn't the important part of the letter. He said:

"We have put out a new product, we have deliberately cut out the sales of our old product in order that you will not be overstocked with it."

Now, the plain fact is that it is logical to assume that the reduction in Griesedieck Brothers' sales in the latter part of 1954 was affected as much by the new product, which didn't go over, as it was by their deliberate enting down of sales in the early part of 1954, which took effect in the latter part of 1954.

And I would put out further to you that that ties is with the fact that Griesedieck Brothers' sales losses were greater outside St. Louis than they were in St. Louis. That is a logical explanation of their sales difficulty.

Another point: On draft beer, there was no change in the consumer price of draft beer. And yet Griesedick Brothers' sales of draft beer in St. Louis in 1954 declined as much as their packaged sales declined. There was no price change there, and yet they declined.

We submit to your Honor roat those four facts a menstrate (340) that there is no proof in the record that Griesedieck Brothers' loss of sales is attributable to Anheuser-Busch's price reduction.

Now, I would point one further thing out. Since March of 1954, when Anhenser-Busch's price was up, and there was a 50-cent differential, all of the St. Louis competitors have come up. Griesedieck Brothers' hasn't. Apparently what is happening is that Falstaff and Carling are taking Griesedieck Brothers' customers at the same price. Apparently there is some reason at work for that change in the market situation.

But I submit to Your Honor that under these circumstances a decrease in sales by Griesedieck Brothers should not be assumed to have been caused by Auheuser Busch's selling at the same price as Falstaff, Stag, and Griesenieck Brothers.

Hearing Examiner Hier: Teil me this, Mr Barton, Anheuser-Busch has a very smart research stat! I know that from previous experience. Certainly, these factors that you are now mentioning, indicating that these competitors were lesing business anyhow, must have been known

If that is a fact, you would get the business in the normal course of events, wouldn't you?

Mr. Barton: No. Falstaff was getting it. Falstaff was the one who was gaining in the St. Louis market. Anhenser Busch had a slight gain.

Hearing Examiner Hier: If that is the case, then (341) your price cut must have what shall I say? put the late March frost on Falstaff's normal—

Mr. Barton: As a matter of fact, it didn't. It didn't even stop it. It didn't stop it, because their sales in the latter months of 1954 exceeded their sales in the latter months of 1953.

Hearing Examiner Hier: Let's take a book again, because, as I say, I am about dizzy with these figures.

Mr. Barton: As a matter of fact, you notice in No vember, 1954—

Hearing Examiner Hier: I have got to whole thing up here, that is what I am looking at.

Mr. Barton: In 1954 they sold 3,899,000 as approved to 3,750,000. They had a better percentage of the St. Landmarket in 1954 than they had in 1953.

Hearing Examiner: 27.41, that is only six months.

. 4

I see what you mean. I was looking at this to mention tigure.

Mr. Barton: There is no question about it. Falstan was picking up the major portion—they apparently has a good advertising program, a good sales promotion program, and they had momentum which has carried them for ward not only in St. Louis but a lot of other places.

But I submit that on the overall, Your Honor, is (342)—this case there is no question but that Falstaff is not injured, they don't have any injury to competition that would be sufficent to provide a prima facie case to the Government.

Griesedieck Brothers, there are many other explanations for their decrease in sales. And the same is true with Griesedieck Western.

So that there is no assuming even that you can equate injury to an individual competitor to injury to competition, which I would not think is borne out by the cases, there is no proof of injury to any competitors.

Moreover, on the over-all, it must be recognized that a brewery or any other businessman who is faced with a dropoff in sales must be free to experiment with means that are available to him to increase sales.

It is recognized in General Foods, it is recognized by economic writers like Corwin Edwards, for example, that such conduct is a legitimate course of conduct, and is the very essence of competition, rather than being something that should be looked upon with suspicion or misgiving by the Commission.

Hearing Examiner Hier: No case so holds yet.

Mr. Barton: No case so holds?

Motion to Dismiss Remard

I would take it that in General Foods— Hearing Examiner Hier: That is a dissent.

Mr. Barton: That is a dissent but, after all-

Hearing Examiner Hier: I say, it is new ground (343) here in this case. This case ploughs new ground in several of its aspects, as I see it.

Mr. Barton: I think it may, very well.

Hearing Examiner Hier: That is one ground. Another ground is whether or not the classic pattern of the big, well entrenched, strong competitor running over small business—such as this fellow Moore who ran his bakery down there—whether that is the only pattern.

Mr. Barton: That is certainly the only thing that rebor'd cases today supply.

Hearing Examiner Hier: And thirdly, I think it ploughs new ground, or will plough new ground, or has ploughed new ground, whatever way you want to put it, in the sense of loss, recovery, leaving only potentiality, which might have happened if this thing had continued, or what might happen if it was put into effect in other areas.

Have you got much more to say?

Mr. Barton: No, Your Honor.

I only want to say that last point that sufficient unto the day that that was done, that a case should be brought and an order should be entered, that on this record on the case as it has progressed thus far, there is no evidence of the type of effect which should be construed to constitute injury to competition, and that for that reason principally, as well as the lack of showing of discrimination, the complaint should (344) now be dismissed.

Thank you, Your Honor.

Colloquy

Hearing Examiner Hier: Mr. Mayer, I am going to deay this motion, for three or four reasons. But I say you now, you have got a mighty slim case here as it is stands. Now, what comes after this, I don't know.

The reason I am going to deny the motion—the reasons are perhaps three. First of all, I am satisfied, Mr. Bartol Mr. Baker, and the rest of you gentlemen, the Commission issuing this complaint, when it did, on the heels of the Goreral Foods case, intended to have a full dress inquiry. At a I am satisfied, therefore, that if I dismissed it, and he took it upstairs, which he naturary would, back it would conserve or eight months from now, and you would have to go through with it anyhow.

My record of reversals is quite good.

The second major reason, or perhaps the third reason, is the potentiality involved here. This record presents a very striking and dramatic display or exercise of economic power. What would have happened if this was allowed to continue? At the present moment, that decision rests in the sole hands of Mr. Busch. Should it be allowed to rest there, or should it be put into public hands?

Supposing this sort of thing was to take place in Minne apolis or Atlanta or some other place, and the pattern was (345)—repeated all over the country? Can it be said that there would be no effect on competition very broadly? I have got my doubts.

Thirdly—or fourthly, it depends on how you assess these reasons. I am not satisfied with this testimony that Mr. Hallquist gave about this experimenting business. He gave me—and he is sitting right back there now—he gave me the impression that he was testifying, Mr. Barton, like a man walking a tightrope, with a highball in each hand.

Colloquy

He gave me the impression of not being too sure of what he should say and should not say.

I am going to hear, and I am going to hear it from the respondent's side of the case. I want to know also what economic reasons exist, if any, why this practice would not be resumed. And I want to know something about this testing business. There are a lot of unanswered questions on this record, a great many.

I am not going to go into it, but I think you know pretty well what they are. There are a lot of unanswered questions on both sides of the case, but particularly on this one.

I say this testing the market, this experimenting to see what you can do and what you can't do, is new. It has never, to my knowledge, been litigated.

And it seems to me that before a decision is made on (346) it that you have to have a considerable background there. And I want to know how it was gone into and why it was necessary to do it in St. Louis County, why was that done. We have his answer, but I don't think it is the full story.

I think those are the major reasons why this case should go to proof, at least in my opinion.

I have got considerable doubt about what you are going to do with this case on final submission, particularly with this order that you have appended to the complaint. But that is up to you.

I am satisfied, gentlemen, that if I were to dismiss this case that it would come right back down here again—not because I am afraid of it coming down again, but because we lose on it, we gain nothing by that procedure.

Mr. Barton: Your Honor, of course, it could be said that there is some doubt in Your Honor's mind-

Colloqui

Hearing Examiner Hier: There is some considerate doubt.

Mr. Barton: It might be advisable to have the ton mission's thinking on that question.

Hearing Examiner Hier: No. They prefer to have a full record sent up to them, Mr. Barton—you know as use as I do—and then it doesn't come back, and I am turned you fellows loose to make a full record.

And I say this to both of you: As this case goes on, (347) the rules of evidence are going to be pretty well relaxed; you have got to get, a pretty full picture here on both sides.

If I recall correctly, you said you might go ahead in Washington the second week in November, the week of November 14?

" Mr. Barton: Your Honor, we will go ahead in Wash ington. The only question is as to the fixing of the time. At one point, I think, I indicated we would be ready to reache ahead the latter part of October or the first of November. I cannot commit myself, to do that now. I would like to make it the latter part of November.

Hearing Examiner Hier: Off the record.

(Discussion off the record.)

Hearing Examiner Hier: On the record.

We will adjourn to the week of November 28, here in Washington.

(Whereupon, at 12:15 p.m., the hearing was adjourned as above noted.)

Transcript of Hearings

1311-1

Monday, December 12, 1955.

Met, pursuant to adjournment, at 9:00 a.m.

Before:

Frank Hier, Hearing Examiner.

Appearances as before.

(349)

PROCEEDINGS

Hearing Examiner Hier: Go ahead, gentlemen.

Mr. Barton: Your Honor, I offer in evidence Exhibit RX-52, which is a collation of Griesedieck Brothers advertising from April, 1951 to April, 1955, and in that connection, since the subsequent testimony will concern this matter for a little while this morning, I call attention to the advertising starting on pages 65—the advertisement on March 1, 1954—and continuing on through 1954; and call attention in particular to an advertisement on page 102 in August, on August 11, 1954, which concerns an advertisement of a special process Krausend Beer.

(The document referred to was marked Respondent's Exhibit 52 for identification.)

Mr. Barton: Before proceeding with the next witness, your Honor, I would like on the record to state that at a subsequent session the defendant will introduce as an exhibit the summary of a survey which was testified to by Mr. Hallquist on the original hearing. The survey form went into evidence as Respondent's Exhibit 12. That was

a survey conducted in April, 1954, and there will be introduced in evidence a summary of the result of that survey. The exhibit is as yet unmarked.

It is not planned, however, to introduce the actual returns as they came from the field, but I would like to a this time turn over to Government counsel the summary which will be (350) introduced, and the actual returns for the purpose of checking, that at the time it is offered there will be an opportunity to cross examine.

Mr. Baker: Mr. Beaman, please.

Hearing Examiner Hier: Just a moment. What objection, if any, do you have to the tender of Exhibit 52 in evidence?

Mr. Mayer: I have not seen it as yet, sir. If it is solely advertising-

Hearing Examiner Hier: Go ahead, Mr. Baker; we might as well take the witness while he is looking at it.

Mr. Baker: Mr. Beaman, will you come forward, please.

ROBERT T. BEAMAN was thereupon called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

Direct examination

Hearing Examiner Hier: Will you state your name! The Witness: Robert T. Beaman.

By Mr. Baker:

- Q. Mr. Beaman, what is your home address!
- A. 676 South Hayworth, Decatur, Illinois.
- Q. Are you appearing here under subpoena?

- 1. Yes, sir.
- O What is your business address, Mr. Beaman!
- A. 623 East Prarie Avenue, Decatur, Illinois,
- (351) Q. What type of business is that?
- A. Package liquor store, off-premises sale only.
- Q. How far is Decatur from St. Louis!
- A. Approximately 120 miles.
- Q. Your business is for the sale of liquor and beer for off-premises consumption only?
 - A. Yes, sir.
- Q. How long have you been in your present business, at your present address?
 - A. Since September 13, 1951.
 - Q. What did you do prior to that time?
 - A. We were in a tayern in the City of Decatur.
 - Q. And prior to that?
- A. I was in the Service, in the United States Marine Corps.
 - Q. What branch of beer do you handle?
- A. Well, we have 20 some odd brands. Your main brand would be Falstaff and Griesedieck, Stag, Budweiser, Schlitz, Pabst, Miller's—those would be your best selling brands.
- Q. Mr. Beaman, have you prepared figures showing your sales of various brands of beers?
 - A. I have.
 - Q. For the years 1953, 1954 and 1955?
 - A. Yes, sir.
 - Q. Do you have those with you?
 - A. I do.
- (351-A) Q. If you would refer to those, please, I would like to ask you what your total beer sales were for the year 1953.

- A. \$106,609.86.
- Q. And for 1954?
- A. \$107.824.71.
- Q. Your beer sales were slightly up in 1954 over 1955
- A. Yes.
- Q. Do you have your 1955 figures?
- A. I have a ten month total of \$90,977.87.

Hearing Examiner Hier: Do you have the unit figures. The Witness: Sir.

Hearing Examiner Hier: Do you have unit figurewith you?

Mr. Baker: We do have some unit figures.

By Mr. Baker:

- Q. Do you have figures, Mr. Beaman, with respect to cases of various beers, Griesedieck, Falstaff, and so forth!
 - A. Yes, sir.
- Q. For the year 1953, could you tell me how many cases of Griesedieck you sold?
 - A. A total of 7,185.
 - Q. And in 1954?
 - A. 6,818.
 - Q. That was a decline in 1954?
 - (352) A. Yes, sir.
 - Q. Have you calculated the percentage decline?
 - A. Approximately 5-1/10th per cent.
- Q. So while your total beer business went up in 1954 your GB sales went down; is that correct?
 - A. That is correct.

- Q. Do you have a comparison menth by month of your Gresedieck sales for 1954 and 1953 as broken down by months?
 - A. Yes, sir.
- Q. Taking the last sixth months of 1954 as compared to the last six months of 1953, what do your figures show on time-edieck?
 - A. There was a decline of approximately 18.5 per cent.
 - Q. And the total year decline was about 5--
 - A. Was 5-1 10th.
 - Q. When did the major decline set in?
- A. In July of 1954, according to our graph year. It was actually—they hit their peak in about February of 1954, I would say.
 - Q. Then there was a gradual decline in July?
 - A. That is right.
 - Q. And a precipitous decline from July?
 - A. Toward the latter part of the year.
 - Q. Mr. Beaman, do you wait on the trade yourself?
 - A. I do.
 - (353) Q. How many employees do you have?
 - A. Counting myself, a total of six.
- Q. Mr. Beaman, to what do you attribute your decline in sales in Griesedieck while your total business was going up or staying about the same?
- A. Well, I think it is due to several things. I think that they had several changes of their pacakge, in the first part, I believe, of 1954.

They came out with a Jubilee pack, and they had at one time. I think we had in our store about, I think we had, two labels on cans, two labels on bottles, and two labels on quarts, that is, when they were changing over, and I think the public was confused.

There were different times when people would so they would prefer one beer out of one label than here of another label. They seemed to think that it tasted as ferent.

Q. Both of them being Griesedieck beers!

A. Both of them being Griesedieck, but being with different label.

Q. And this change of labeling occurred some is early in 1954?

A. I believe that is correct.

Q. Did you notice a switch then of Griesedieck parchases to some other brands?

A. Yes.

(354) Q. To what other brands primarily did the switch go?

A. Primarily to Falstaff.

Q. Do you have your Falstaff figures with you!

A. I do.

Hearing Examiner Hier: Just a moment. You said there were several reasons. You mentioned package change

The Witness: Well, they came in with a process called Krausend, and—

Hearing Examiner Hier: This is in 1954?

The Witness: This, I believe, was, sir.

Hearing Examiner Hier: Go ahead.

The Witness: And that particular time we received an awful lot of complaints from our customers on the continuity of the beer. It didn't—it was not the same always. We had a lot of complaints about it being green; that is what I meant by—

Hearing Examiner Hier: All right.

Ba Mr. Baker:

- Q. Do you have your Falstaff figures, Mr. Beaman!
- 1. 100
- Q. How many cases of Falstaff did you sell in 1953?
- A. 2,691 cases.
- Q. And in 1954?
- A. 4,593.
- Q. How are your Faistaff sales running for the first ter. (355) months of 1955?
- A. 4,175 for the first ten months, which will be an increase over 1954.
- Q. Did you yourself try Griesedieck Beer when the complaints came to you?
 - A. I did on occasion.
 - Q. Had you been a Griesedieck drinker?
 - A. Yes.
 - Q. And your family?
- A. My father and my brother—my brother has a package liquor store in the city separate from our operation, but being in the family, why, we follow each other's operation, and he and my father, in particular, were Griesedieck drinkers; in fact, their distributor was a very close friend of theirs, and they both, during this period of time, we—rather they did—switched from Griesedieck Brothers Beer, because they didn't care for it. They didn't care for the taste of it.

Mr. Mayer: I move to strike that part of the answer, Mr. Examiner, which is referring to what somebody told him. What this witness himself did is probably pertinent.

Hearing Examiner Hier: Do you know of your own knowledge that they switched?

The Witness: I do.

Robert T. Beaman, for Respondent Dass'

Hearing Examiner Hier: The reason for switching at he stricken.

(356) By Mr. Baker:

- Q. Mr. Beaman, have there been any changes in the prices of beer that you handle since late 1953?
 - A. No.
 - Q. What do you sell six packs for, the different brands
- A. Falstaff, Griesedieck and Stag, six for \$1.10, plus your State sales tax.
 - Q. How about Budweiser and Schlitz?
- A. Budweiser, Schlitz, Labst and Miller's, those premum brands are six for \$1.35, plus your State sales tax.
 - Q. Do you handle Hamms, Heileman's Old Style?
 - A. I do.
 - Q. What do you sell six packs of Hamms for?
 - A. \$1.35.
- Q. That is the same as your Budweiser. How about Old Style?
 - A. Old Style is the premium price beer, six.
 - Q. Do you handle Blatz?
 - A. No, sir.
 - Q. Did you at one time?
 - A. I did at one time.
 - Q. When did you discontinue handling Blatz!
- A. When the local distributor gave up the agency for Blatz.
 - Q. Approximately how long ago would it be?
 - A. I would say approximately a year and a half ago.
- Q. When you were selling Blatz, at what price did yea sell a (357) six pack?
 - A. It was priced at the premium price, six for \$1.35.

Q. Have you given any consideration to taking Blatz back on?

A. Yes, I have.

Q. What have you done?

Mr Mayer: I object to this questioning. This is purely speculation, and I do not see what defense this possibly would be relating to.

Mr. Baker: We cannot tell whether it is speculation

until we hear what the witness has to say about it.

Hearing Examiner Hier: You are asking what he is going to do in the future?

Mr. Baker: He has made some concrete plans, has

gotten prices.

Hearing Examiner Hier: Well, if he has obtained prices, Mr. Mayer, on restocking, he can testify to that.

Mr. Mayer: To what defense can that be to the price reduction of Budweiser in 1954, his plans for 1955 or 1956?

Hearing Examiner Hier: I suspect it goes to this alleged premium.

You may answer.

The Witness: I have talked with the representative from the brewery. He has located a supplier, and I exhaus the Blatz Beer from this particular distributor in Springfield, Illinois. The price of it would be slightly under the price of (358) Falstaff, Griesedieck and Stag.

Hearing Examiner Hier: You mean the price to you!

The Witness: Yes, sir.

Hearing Examiner Hier: What will you sell it at, what will that price make you sell it at, to the consumer, six?

The Witness: Six for \$1.00, sir.

Robert I. Beaman, to lie pointent Itie

Harring Evanumer Horr: Sex tot a dome. The , but ven have been offered,

He Witness: Yes, sir.

It I may add exerted me.

By Mr. Buhir:

1) We Beaman, when you were handling Blocker the discontinued bandling it, what price did you so Sec. - 21.1

1. -1....

O What was your purchase price at that time?

1. I believe it was \$3.76 a case; that would be donof eight six packs. You mean my cost price, whole-Di her !

Q. Yes.

A. I believe it was -I'm quite sure that is right, I' was the same price as all our other premium beers,

Q. What is your cost price today on Falsaff to eremparable-

A. 33.19 for a case of 24.

O. You say if you take Blatz on, back on, the price you will have to pay is just under \$3.19 for Falstaff! (350) A. That is right.

Exense me, I think I said \$3 and something for a signt 6 packs it. \$3.76, it would have been for 24 cats

Hearing Examiner Hier: Do you want that market

Mr. Baker: Yes.

Rearing Examiner Hier: There have been market tor identification as Respondent's Exhibit 53, the witness 1953 and 1954 total beer sales of all brands, and for to months of 1955.

As Respondent's Exhibit 54, the witness' month by solth case purchases of five different bounds of beer many the same period.

(The documents referred to were marked as Respondent's Exhibits 53 and 54 (or identification.)

ha Mr. Haker:

Q. Mr. Beaman, Ushow you Respondent's Exhibit 53 and Exhibit 54 for identification, and I ask you if you prepared those from your books and records!

A. I did.

Mr. Baker: I offer them.

Mr. Mayer: We have no objection.

Hearing Examiner Hier: Admitted.

(The documents referred to, heretofore marked for identification Respondent's Exhibits 53 and 54 were received in evidence.)

(360) By Mr. Baker:

Q. Mr. Beaman, I show you Respondent's Exhibit 55 and Respondent's Exhibit 56 for identification, and ask you what they are.

(The documents referred to were marked as Respondent's Exhibits 55 and 56 for identification.)

The Witness: They are an inside and an outside picture of the liquor store, my liquor store, excuse me.

Mr. Baker: I offer these, your Honor.

Mr. Mayer: No objection.

Hearing Examiner Hier: What is it?

Mr. Mayer: We have no objection.

Robert T. Beaman, for Respondent Cross

Hearing Examiner Hier: Admitted as Exhibit 55 at 56.

(The documents referred to, heretofore quase for identification Respondent's Exhibits 55 and 5 were received in evidence.)

By Mr. Baker:

- Q. Mr. Beaman, who first talked to you about the possibility of testifying in this case?
 - A. Mr. E. M. Crawford.
 - Q. Who is he?
 - A. He is our local Budweiser Beer distributor.
 - Q. Who is paying your expenses to Washington!
 - A. The Anheuser-Busch Company.
 - Q. Have you talked to Mr. Ingamells and Mr. Hallquist (361) A. Yes, sir.
 - Q. Are you related to any Anheuser-Busch employees
 - A. No, sir.
 - Q. Are you indebted in any way to Anheuser-Busch!
 - A. No, sir.
- Q. You are under no obligation to Anhenser-Busch, either financially or otherwise?
 - A. None.
 - Mr. Baker: You may cross examine.

Cross Examination by Mr. Mayer:

- Q. Mr. Beaman, during 1954 were the wholesale prices of these various brands of beer to you the same as they had been during 1953?
 - A. No, sir.
 - Q. There had been some changes in the price!

Robert T. Beaman, for Respondent Cross

- A. There had been an increase in the price of your premium brands; I believe that was the increase. I know that the premium beer went up.
 - Q. When was that increase, sir?
- A. I believe that was in October of 1953, I believe. I don't know: I don't recall. It was just after they had had the big strike, and all premium beers went up at that time.
- Q. Were there any changes in prices of the beers that you handled during the year 1954?
 - (362) A. None.
 - Q. None to you, sir?
 - A. None to me.
- Q. Now, sir, when did the new label of the Griesedieck Beer first appear in your store?
- A. I believe the latter part—I believe it was Christmas time, approximately, in 1953; I believe.
- Q. During then, let us say, of December, 1953 and January of 1954 were there two labels of Griesedieck Beer on your shelves?
 - A. There was a time, yes, sir.
 - Q. What was that time?
- A. Well, I believe it was during the latter part of 1953, during December and, possibly January of 1954.
- Q. After January, 1954, then Griesedieck was under one label on your shelves; is that right, sir?
- A. I wouldn't say that for sure. I mean our inventory is such that we may have had quarts of the old label, we may have had 12-packs; we carry different packages of them. We carry quarts, we carry 24 cans, we have 12-packs, we have 6-packs, we have pint bottles. We have throw-away pint bottles at this particular time, and there

Robert T. Beaman, for Respondent Com-

may have been a package, that we would have had been inventory.

- Q. That would be an oddity though, one parkage at the packages of the various sizes left rather than in our configuration any size?
- (363) A. No. Actually, no. Your business does always—I mean, you don't always sell quarts one day at the next day sell, the same amount. You might
- Q. Now, vin January of 1954 were you purchast.

 Griesedieck, Brothers Beer under two labels!
- s A. I am not able to answer that question. I don't know
 - Q. Were you purchasing it in March under two labels
 - A. I don't believe so. But again I am not able to tell. I was purchasing their cans under two labels for their 12-pack was packed in one type of pack and their 6 pack were packed in a Jubilee pack.
 - Q. For how long did that last, Mr. Beaman!
 - A. That was several months.
 - Q. What months were those?
 - A. That would have been from the time they introduced the Jubilee pack for probably four or five months after that; in other words, I believe they introduced the Jubilee in December of 1953. That would have made the two packages coming out together up until probably to close to the spring of 1954. These are all from memory.
 - Q. In other words, the two labels were on your shelves then, from December of 1953 through the spring of 1954:
 - A. I believe that is correct,

11

Q. How do you account then for the two labels both appearing on the shelves in December of 1953 and until the spring of 1954. (364)—that there is no significant de-

Robert T. Beaman, for Respondent Grass

mass in the safe of Griesedieck Brothers until July of

A Well, I don't think that any product would fall off amediately. I think that after they made a mistake, I think it would be some time before they would feel that stake.

Q. You mean six months, as far as the labels are conorned now, only the labels we are talking about!

A. I don't quite understand what you mean,

Q. Well, sir, I thought you testified that there was some confusion concerning.

A. There was.

Q. (continuing)—the labels of Griesedieck Brothers Beer and, consequently, that influence was felt on the consumer trade.

A. That is right.

Q. They were not sure about what kind of beer they were getting,

A. That is right.

Q. And I was merely asking you, you said there had been some switching, as I remember it, to other beers from Griesedieck Brothers, and one of the reasons given for it was, perhaps, the difference in the labeling?

A. That is right.

Q. But your own sales figures show that prior to the discontinuance of the particular two types of labeling, and the (365) insistence on the one type of labeling, namely, Griesedieck Brothers, that up until July of 1954 there isn't any significant decrease in the sale of Griesedieck Brothers Beer during the period in which you had the two labels on your shelf. Therefore, I want to know what

significant effect the difference in the labeling had in your decrease in Griesedieck Brothers Beer subsequent to July of 1954?

A. Well, it was a factor, I believe, as I said, I think—I know we received those complaints probably, if I recall correctly, probably later on, maybe, in other words, after the two kinds—in other words, the customer would come in, he would get one kind, maybe he would want six cans of beer. The next time he would want 12. That is where your difference came and, possibly, after he had had that a number of times, he would decide, at least that was the impression I was left with, and it may have taken some time for that to show up in your sales.

I believe—I looked it over—I believe that after February—in February—they started more or less leveling of. They were—is that correct there?

- Q. These are your figures there, sir.
- A. May I-
- Q. Mr. Beaman, did any customer of yours ever specifically tell you he was switching from Griesedieck Brothers to any other brand because he was confused by the label?

(366) A. No.

Mr. Mayer: That is all we have of Mr. Beaman.

Redirect Examination by Mr. Baker:

Q. Mr. Beaman, did anyone ever tell you that they were switching because they did not like the product!

A. Yes, sir.

Mr. Baker: That is all.

Hearing Examiner Hier: Just a moment. I want to ask you a question we have not gone into.

You have a lot of experience with the retail trade. How much switching is there, any kind of beer, I do not care what it is, how much switching is there, 5 per cent of your eistomers drink one kind for a while and then switch, le per cent, or what!

The Witness: I don't have those figures, your Honor, Hearing Examiner Hier: I know you do not have the figures.

The Witness: But I would say that the biggest percentage of our business is regular customers; the biggest percentage of those customers we know what they want, and they don't change. They buy the same beer. I think beer is, in my opinion, like cigarettes. I think you acquire a taste for it, and you stick with it pretty well.

Hearing Examiner Hier: Can you give me an idea of (367) what percentage, roughly, of your customers do switch in, say, a two or a three-year period?

The Witness: I wouldn't be able to give you a percentage figure on that.

Hearing Examiner Hier: All right.

Any more questions? You are excused, Mr. Beaman, thank you very much.

(Witness excused.)

Mr. Barton: Call Mr. John L. Henry to the stand, please.

John L. Heary, for Respondent Porch

JOHN L. HENRY was thereupon called as a wire as behalf of the Respondent and, having been first dup sware testified as follows:

Direct Examination by Mr. Barton;

- Q. Mr. Henry, what is your home address, please
- A. Rural Route No. 3, Blad Hill Road,
- Q. In shat city?
- A. Jefferson City, Missouri.
- Q. What business are you engaged in in Jefferson City
- A. In the I own and operate the Alibi Tayern.
- Q. Where is that located!
- A. At 501 Clark Avenue.
- Q. In Jefferson City, Missouri!
- A. That is right.
- (368) Q. How large a town is Jefferson City, Missouri?
 - Α. 30,000.
 - Q. How far is it from St. Louis, Missouri!
 - A. 120 miles west.
- Q. Now, in your business, do you sell beer for offpremises consumption as well as consumption on the premises?
 - A. Yes, sir,
- Q. What percentage of your bottle beer sales are sold for consumption on the premises?
 - A. Ninety-five per cent.
 - Q. You sell canned beer also? A. I do.
- Q. What percentage of your canned beer is sold for our premises consumption?
 - A. I would say 5 per cent.
- Q. And the remaining 95 per cent is for consumption off the premises?
 - A. Take-home, off the premises.

- Q. How long have you been engaged in business at the Albi Tayern!
 - A. The third of March, 1952 is when I started the busi
 - Q Do you personally wait on the trade!
 - A I do.
 - Q. Do you have any assistants?
 - A. My wife and a bartender.
 - (30) Q. What bottle and canned beer do you handle?
- A. I handle Budweiser, Schlitz, Griesedieck, Falstaff and Stag, five brands.
- Q. Has there been any change in the beer prices to you since January 1, 1953 on any of these brands that you handle?
 - A. Falstaff only.
- Q. How much was the—what was the price change in Falstaff? When did it occur?
 - A. It increased two cents a case.
 - Q. When, approximately?
 - A. It must have been in July, 1955, I would say.
- Q. Mr. Henry, do you know most of the customers who rome into your place of business?
 - A. I do, sir.
- Q. What is your experience with respect to the regularity with which those customers drink the same beer?
 - A. State that question, will you please?
- Q. What is your experience with respect to the regularity with which these customers who come in drink the same beer as they were accustomed to drinking?
- A. Well, you serve your customers, you can practically zo to the ice box and get the beer that you know, the kind they drink, you are very familiar with that.

- Q. In other words, it is your general—as a general rule you can get the beer out of the ice box as they walk in the (370)—door?
 - A. That is right.
- Q. Mr. Henry, have you produced a tabulation of you purchases of Griesedieck, Falstaff, Stag, Schlitz and Ros weiser Beer for 1953, 1954 and 1955?
 - A. I have, sir.
 - Q. Do you have it with you?
 - A. Yes, sir.

(The documents referred to were marked as Respondent's Exhibits 57-A through G and 58 for identification.)

By Mr. Barton:

- Q. Now, Mr. Henry, is Exhibit 57-A through G an accurate tabulation of your purchases of the various types of beer disclosed on the exhibit for the years 1953, 1954 and 1955?
 - A. Yes, sir; they are.
- Q. And is Exhibit 58 an accurate summary of your purchases of those various types of beer for the years 1953, 1954, 1955 in dollars?
 - A. Yes, sir; that is right.
- Q. Now, based upon Exhibit 58, what were your total beer purchases in 1953?
 - A. \$17,929.89.
 - Q. What were your total beer purchases in 1954?
 - A. \$20,145.
- Q. That gave you a percentage increase in your total business (371) in 1954 over 1953 of approximately 124 per cent, did it not?

- A. That is correct.
- Q. What were your Griesedieck Brothers purchases in
- A. My total Griesedieck purchases in 1953 were \$9,231.
- Q. What percentage of your total beer purchases was that in 1953?
 - A. 51.5.
- Q. In other words, Griesedieck accounted for 515 of your package beer purchases in the year 1953?
 - A. That is right.
 - Q. What were your Griesedieck purchases in 1954?
 - A. 88,365.76.
- Q. What percentage did Griesedieck account for of your beer purchases in 1954?
 - A. 41.5.
- Q. What have been your Griesedieck purchases in 1955 through November, through the 25th of November?
 - A. \$5,983,28.
- Q. What percentage is that of your total beer putchases for the year 1955?
 - A. 32.9.
- Q. What was the decline in your Griesedieck purchases during 1954 over 1953?
 - A. State that again, please.
- Q. I say, what was the percentage decline in your friesedieck (372) purchases 1954 as compared to 1953?
 - A. My decline in 1954 over 1953 was minus 9.4.
- Q. And that was while your total business was increasing from 1953 to 1954 by 12.4 per cent, was it not?
 - A. That is right.

John L. Henry, for Respondent least

- Q. Did your Falstaff purchases in 1.54 go up or day, as compared to 1953?
 - A. It went up in 1954.
- Q. What was the percentage increase in your fursion purchases 1954 over 1953?
 - A. In 1954 the percentage was 21.2.
- Q. Let us put it this way: What were your pureta sof Falstaff in 1953?
 - A. My total purchases in 1953 were \$1,914.20.
 - Q. What percentage of your business was that?
 - A. 10.6.
 - Q. What were your Falstaff purchases in 1954?
 - A. \$4,264.
 - Q. What percentage of your business was it that year'
 - A. 21.2.
- Q. And the increase in Falstaff purchases 1954 over 1953 was 120 per cent, was it not?
 - A. Correct.
- Q. Mr. Henry, you have testified that your Griesedieck purchases declined in 1954 while your total purchases increased. (373) In what month of 1954 did your Griesedieck Brothers purchases start dropping off as compared to 1953?
 - A. I would say in March and April.
- Q. What happened to the remainder of 1953, did they continue to decline?
 - A. Yes, they did; yes, sir.
- Q. How about 1955, has Griesedieck gone back to the 1953 level or are they continuing to decline?
 - A. They are continuing to decline, I would say.
 - Q. What happened to Falstaff in 1955, did they-
 - A. Very much on the increase.

John I. Henry, for As nondeat Direct

- Q. What percentage of your purchases is Falstaff in 1955.
 - A. 84,832,42.
 - Q. Representing what percentage of your business!
 - A. 26.6.
 - Q. That is compared to the 21.2 per cent in 1954?
 - A. Correct.
- Q. Mr. Henry, what explanation, if any, do you have then for this drop off of Griesedieck Brothers Beer purchases by you 1954 over 1953, and the decreasing percentage of your total business which Griesedieck Brothers represents!
- A. Well, the customer reaction, so many of your customers complain about the beer being bitter, it didn't taste like it used, "Let me try something else," and most of them wou'l order Falstaff.
 - (374) Q. When did that customer reaction start?
 - A. Well, I would say in March and April of 1954.
- Q. Are you familiar with the fact that Griesedieck Brothers came out in March or April of 1954 with a new beer, advertised as a new beer?
 - A. Yes, I am; yes, sir.
- Q. Was it about that time that the customer reaction that you speak of began?
 - A. That is right.
- Q. Do you have any customers who were drinking firesedieck Beer prior to April and May of 1954 who switched to another brand?
 - A. Yes, sir.
 - Q. Pardon!
 - A. Yes, sir; I have.

- Q. What, if anything, did they tell you when they changed?
- A. Well, the biggest complaint was the beer seemed to be very bitter.
- Q. You mean bitter as compared to what it had been before?
 - A. That is right.
- Q. Do you know the names of any of your customers who switched from Griesedieck to other brands at or about that time?
 - A. Yes, sir.
 - Q. That is in 1954?
- A. Herman Stegman, Ray Lubbert and Henry Lubbert, two brothers; (375) and, well, there are numerous people, I just can't think of offhand, but there is quite a number of them.
- Q. Were these people whom you have named regular customers of yours?
 - A. Yes, sir; daily customers.
 - ' Were they customers for service over the bar!
 - A. . at is right.
 - Q. How about off-premises consumption too?
- A. Yes. Some of their business; but most of it over the bar.
- Q. What would be, these customers you have named their normal regular consumption a day in your place of business?
- A. Oh, I would say anywhere between seven to ten bottles.
- Q. Have any of these customers who you have named as switching from Griesedieck to another brand, Falstaff, in 1954, gone back to Griesedieck Brothers?

- A. They have not, no.
- Q. Who first contacted you about testifying here?
- A. My wholesaler Norbert Scheppers.
- Q. He is your Budweiser wholesaler?
- A. Yes, sir.
- Q. Did you talk to Mr. Ingamells and Mr. Hallquist?
- A. I did, sir.
- Q. And Anheuser-Busch is paying your expenses to come here to testify?
 - A. Yes, sir.
- (376) Q. Are you in any way indebted to Anheuser-Busch!
 - A. I am not.
- Q. Do you have any relatives who are employed in Anheuser-Busch?
 - A. I do not have any: no, sir.
- Q. You are testifying pursuant to subpoena, are you not?
 - A. That is right.
- Q. What do you sell the 6-pack Budweiser for, for offpremises; that is, 6-pack can Budweiser?
 - A. \$1.15.
- Q. What do you sell Falstaff and Griesedieck and Stag for?
 - A. \$1.05.
 - Q. What do you sell Budweiser for over the bar?
 - A. Thirty cents.
 - Q. What do you sell Falstaff and Stag for?
 - A. Twenty-five.

Hearing Examiner Hier: Are your gross margins of profit on those two different prices the same or different?

The Witness: would say, yes, they are about the same.

Hearing Examiner Hier: They are the same?

The Witness: I would say approximately the same.

Hearing Examiner Hier: You would make just as much money selling a bottle of Budweiser over the bar as you do a bottle of Falstaff?

(377) The Witness: I make more money selling Badweiser.

Hearing Examiner Hier: More money?

The Witness: Yes, sir.

Hearing Eaminer Hier: How much more, six cents, eight cents, what is it?

The Witness: Roughly I would say six cents.

Hearing Examiner Hier: Six cents additional?

The Witness: That is right.

Hearing Examiner Hier: While I have already interrupted you, I might ask you another question. You sell draft beer in your place?

The Witness: Yes, sir; I do.

Hearing Examiner Hier: What brand?

The Witness: Budweiser.

Hearing Examiner Hier: Also when you buy been that is the branded beer, do you buy on customer preference alone or do you buy on price or do you buy on both!

The Witness: Well, I just buy on customer demand, I would say. I only handle five brands.

Hearing Examiner Hier: What I am interested in gentlemen, not necessarily from this witness, is how much difference in price it takes to make a retailer ignore customer demand and buy another type of beer. I would like

to know the answer to that somewhere along in this case. Ido not know whether he can tell me or not.

378) By Mr. Barton:

- Q. Mr. Henry, how long can you keep beer on your premises which you order without it becoming unsalable?
 - A. I would say seven to ten days.
- Q. You have got to move the beer that you buy fairly quickly?
 - A. Definitely, turn over.
- Q. And, in general, your purchases are dictated by what you think your customers are going to buy?
 - A. That is right.
- Q. By the way, when the beer is sold over the bar there is this five cent differential between Budweiser, Schlitz and Falstaff, Griesedieck?
 - A. That is right.
- Q. When you sell it in the 6-can pack there is a five ant differential on the whole six cans that are sold, is there not?
 - A. Ten cents, \$1.15 and \$1.05; ten cents.
- Q. In other words, a differential of around less than two cents a container?
 - A. That is right; two cents a can, that is right.

Mr. Barton: You may cross examine—by the way, just a minute.

Your Honor, I offer in evidence Exhibits 57-A through 6, and 58,

Hearing Examiner Hier: Any objection? Admitted.

(The documents referred to, heretofore marked for (379) identification Respondent's Exhibits 57-A through G and 58 were received in evidence.)

Hearing Examiner Hier: Tell me this, Mr. Henry, when somebody comes into your place and wants a bottle of Miller's, you do not handle Miller's, do most of the people who come in there, who want Miller's, Pabst or Schlitz or some other brand you do not handle, do they buy some other brand or do they walk out or what is the relative percentage of that?

(380) The Witness: Well, I really don't have any other calls for the beer I handle.

Hearing Examiner Hier: Nobody wants anything else! The Witness: Nothing else. I don't have any calls for it; that is the reason I don't stock any of it.

Hearing Examiner Hier: . Mr. Mayer?

By Mr. Barton;

- Q. By the way, your tavern, what is the general type of your tavern, is it a family type or transient business
 - A. I would say neighborhood tavern definitely, a neighborhood tavern.
 - Q. In other words, your customers are more repeateustomers than new customers?
 - A. That is right, definitely; that is right.

Cross examination by Mr. Mayer:

- Q. Mr. Henry, how long have you handled Budweiser
- A. Ever since we have been in business, the third of March 1952.
- Q. Was this a going business when you purchased itsir, or when you took it over?
 - A. Yes, sir; it was.
 - Q. It was?
 - A. Yes, sir.

- Q. And was Budweiser handled at that time?
- (381) A. That is right.
- Q. Has Budweiser been the only draft beer that you have had in your tavern?
- A. No. I handled, Falstaff, I would say, about half the time. I can check my records and give you a definite figure on that.
 - Q. I take it you do not have Falstaff now, sir?
 - A. That is right; Budweiser only.
 - Q. How do you purchase your Budweiser, Mr. Henry?
- A. I buy it through the wholesaler, Norbert Scheppers, pay in cash for it on delivery.
 - Q. And he delivers it, I take it, to your establishment?
 - A. That is right.
 - Q. Does he call on you every day?
- A. Only for my draft beer; once a week on my cans and bottles.
- Q. Is it an order process, you give him the order as be drops in in the morning?
 - A. That is right; be calls in the morning by 'phone.
- Q. Now, sir, were there any price changes in any of the brands of beer from the wholesalers to you that you handled during 1953?
 - A. No.
 - Q. There were none?
 - A. No, sir.
- (382) Q. Were there any prices in any of the brands of beer you handled during 1954?
 - A. Not any.
- Q. Has Griesedieck Brother, to your knowledge, returned to its old formula in distributing its beer?
- Mr. Barton: I am sorry, I did not get that question. Your Honor. In distributing—

Mr. Mayer: In manufacturing and distributing its be-Hearing Examiner Hier: Repeat the question, M Reporter.

(The question was read.)

Hearing Examiner Hier: What do you mean by forms la in distributing?

Mr. Mayer: Well, the gentleman has testified the was a new process used in conjunction with the distribution.

Hearing Examiner Hier: That is the formula in manufacture, not the formula in distributing.

Mr. Mayer: My main question was as to whether not they have returned to their old formula in manufacturing their beer.

Hearing Examiner Hier: All right. You may answel that,

The Witness: I don't know.

Hearing Examiner Hier: Its formula in manufacturing (383) is what his question was directed to, and the witness' answer is he doesn't know.

Mr. Mayer: "I don't know the answer" or "I do" understand the question asked."

Hearing Examiner Hier: I understood it to be "I don't know."

Put the question again; we will find out.

Bu Mr. Mayer:

Q. Mr. Henry, to what did you attribute your decrease in Griesedieck Brothers' sales in March and April of 1954

A. Well, just customers complained of the bar was leadily reason.

Q. Excuse me, sir!

A. I say, customers complained of the product, inferior, I would say.

Q. Was there any change in the Griesedieck Brothers' formula in manufacturing its beer at that time?

A. Well, they were advertising under the Krausend name, that the beer was Krausend.

Q. Do you know what that type of manufacturing process is?

A. No. I don't.

Q. Now, sir, can you tell us just why Falstaff is increasing its sales in your tavern?

A. Well, a lot of people say it is awfully good beer, very good beer.

(384) Hearing Examiner Hier: What do you drink? The Witness: I drink Budweiser.

By Mr. Mayer:

Q. Do you know what process Budweiser uses in manutacturing its beer?

A. I do not.

Mr. Mayer: That is all we have, Mr. Examiner.

Hearing Examiner Hier: Anything more?

Mr. Mayer, do those Exhibits 57-A through -G show the amount of draft beer?

Mr. Mayer: I believe they do, sir.

Hearing Examiner Hier: So it can be compared with the amount of packaged beer?

Mr. Mayer: Yes, it is in barrels. There are barrels, sir. I do not know whether they have been converted.

Mr. Barton: What was your question, Your Honor!
Hearing Examiner Hier: I just wanted to know whether your exhibit showed it, because I wanted to get some

notion about the amount of draft beer he sells as compared with the package.

Mr. Barton: Let us ask him.

Hearing Examiner Hier: Taking your total sales of Budweiser, both draft and package, what percentage is draft?

The Witness: I would say very little. Hearing Examiner Hier: Very little?

(385) The Witness: Yes, I would say very little.

Hearing Examiner Hier: Most of it is packaged!

The Witness: No, most of my beer is bottled beer across the counter.

Hearing Examiner Hier: I understand. I am not talking about all your beer, I am talking about all your Budweiser beer, whether it is packaged or whether it is draft, it is still Budweiser beer.

The Witness: Well, I sell more package, in bottle beer, than I do draft beer, by far.

Hearing Examiner Hier: You do?

The Witness: Yes.

Hearing Examiner Hier: Considerably more!

The Witness: Yes.

Hearing Examiner Hier: All right. That is all. I guess they are through with you, Mr. Henry. Mr. Barton: That is all. You are excused.

(Witness excused.)

Mr. Barton: Mr. Wombacher.

JOHN W. WOMBACHER was thereupon called as a witness for the Respondents and, having been first duly sworn, testified as follows:

Direct examination

Hearing Examiner Hier: Will you spell your name, sir? (386) The Witness: W-o-m-b-a-c-h-e-r.

Hearing Examiner Hier: What is your first name?

The Witness: John W.

Hearing Examiner Hier: Go ahead.

Bu Mr. Barton:

- Q. Mr. Wombacher, what is your home address, please?
- A. 117 Riverview Court.
- Q. Peoria, Illinois?
- A. Peoria, Illinois.
- Q. What is your business?
- A. We operate a tavern and liquor store combination, both on and off the premises sales.
 - Q. Where is it located?
 - A. 2525 North Adams, Peoria, Illinois,
 - Q. How long have you been engaged in that business?
 - A. Oh, I have been there nine years.
 - Q. Nine years?
 - A. Yes.
- Q. What products, in general, besides liquor and beer by you handle?
- A. Well, we also handle delicatessen, foods in the liquor store, some sporting goods.
 - Q What brands of beer do you handle?
- A. We handle in all around thirty, thirty-five brands from time to time, primarily Budweiser, Schlitz, Miller's,

Pabst, (387) Heileman's Old Style, Blatz, Falstaff, Stag. Griesedieck, Edelweiss, Atlas.

- Q. How do these beers compare in price, that is, in the retail sales?
- A. Well, I would group them into three categories. There are your premium beers we sell for \$1.08 for a shipack, for example. That would be your Budweiser, Schlieb Miller's, such as that. Your Stag—
 - Q. Would it include Heileman's Old Style?
 - A. Yes.
 - Q. And Hamms?
 - A. Hamms.
 - Q. What was the next classifiaction?
- A. Oh. Falstaff, Stag, Griesedieck Brothers, Carlings, Black Label that we sell for 98 cents for a six can cartee
 - Q. Do you have a classification of prices below that
- A. Yes. We have the Atlas, Edelweiss, some others that we sell for around 89 cents for a six pack.
 - Q. Do you have Gipps?
 - A. Gipps, yes.
 - Q. Where is that manufactured?
- A. Now it is manufactured in Chicago; formerly it was a Peoria brewery.
 - Q. What does that sell for!
 - A. We sell it for 89 cents for a six pack.
- (388) Q. Let me show you Exhibit 59, and ask you this is a list of the prices in your package department

(The document referred to was marked Respected ent's Exhibit 59, for identification.)

The Witness: Yes, sir.

Ba Mr. Barton:

Q. That is as of some time in October.

I notice Gipps is 87 on this one for the six pack.

A. Yes, I made a mistake on that of two cents. It is two cents below Edelweiss and Atlas.

Q. I see.

What are your prices over the bar for Budweiser, Schlitz, Pabst, Miller's, and so forth?

A. 30 cents.

Q. What are your prices for Falstaff, Stag, Griese-beck!

A. 25 cents.

Q. Do you have other over-the-bar beers besides those!

A. Yes. The Gipps and Atlas, Edelweiss, we sell for 20 cents.

Q. Those are all for the 12-ounce returnable bottle?

A. Right.

Mr. Barton: I offer 59 in evidence.

Mr. Mayer: No objection.

Hearing Examiner Hier: Admitted.

(The document referred, heretofore marked for (389) identification Respondent's Exhibit 59, was received in evidence.)

Mr. Barton:

Q. I show you Respondent's Exhibit 60, and ask you that it is.

(The document referred to was marked Respondent's Exhibit 60, for identification.)

The Witness: It is the picture of the exterior of our latern, also the liquor store.

Q. I show you Respondent's Exhibit 61, and ask what it is,

(The document referred to was marked Resp.) ent's Exhibit 61, for identification.)

The Witness: The picture of the interior of our liquistore.

By Mr. Barton:

Q. Have you produced a document showing your gresales 1950 through 1955, and your purchases of Grieselles Brothers beer?

A. Yes.

Mr. Barton: May I have it?

(The document referred to was marked Responent's Exhibit 62 for identification.)

By Mr. Barton:

- Q. I show you Respondent's Exhibit 62, and ask you whether (390) this is a tabulation of your gross sales for the years 1950 through 1955, and your purchases of Griesedieck Brothers beer by months for each of this years?
 - A. That is correct.
 - Q. And the purchases?
 - A. That is correct.
- Q. Mr. Wombacher, what were your total gross sales for 1953?

Mr. Mayer: Mr. Examiner, I think all these figures appear on the memorandum. I do not see any reason to waste our time in asking questions about the figures as they appear on the exhibits.

Hearing Examiner Hier: What is the point, Mr. Barton, if they are in the record, if they are going into the

record, and he has not objected so far, what is the point as having him recite them?

Mr. Barton: I do not have any objection-

Hearing Examiner Hier: Do you have any objection to these exhibits, Mr. Mayer?

Mr. Mayer: No. sir.

Hearing Examiner Hier: This Exhibit 62 is admitted into the record, without objection.

Mr. Barton: All right, sir.

(The document referred, heretofore marked for identification Respondent's Exhibit 62, was received in evidence.)

(391) Hearing Examiner Hier: I assume the exhibit shows the same picture the other witnesses have testified to?

Mr. Barton: That is true, Your Honor. Let me just ask these general questions.

Bu Mr. Barton:

- Q. How did your Griesedieck Brothers business compare with your total business, 1954 as against 1953, insofar as the decline in totals was concerned?
 - A. 1954 and 1953?
 - Q. Yes.
 - A. In 1954 our business was down slightly.
 - Q. That is, your total business?
- A. Gross business, gross sales. However, the Griesedieck sales dropped considerably more in percentage than our gross sales did.
- Q. Well, is it a fact that Griesedieck Brothers dropped 15 per cent in 1954 against 1953?

A. That is correct; 15 per cent, and our over-all saws were down, I believe, around seven and a half, 7.8.

Q. What is the fact as to whether your Griesesian Brothers sales are down the first ten months over 1976 as against the first ten months of 1954?

A. Our Griesedieck sales are down 28.8 per cent in the period.

Q. When did you first notice that Griesedicck Brothersales (392) s in your business were falling off?

A. Oh, I would say in the early months of 1954.

Q. Did you hear any of your customers make any remarks about Griesedieck Brothers beer at or about that time?

A. Yes. We had complaints that the beer had changed flavor, taste, and also had quite a number of complaints about the beer being wild, and so forth.

Q. What do you mean about it being wild? What is the meaning of the term "wild" in that connection?

A. We would open a bottle or can and the beer russover. We had a period, I would say, of—I don't know whether it was just one batch—but it seemed to go on for about a month where we got numerous complaints from customers. They would return packages that would see—primarily off-premises cans—they would bring it back and complain when they opened a can it would shoot all over the room and run all over.

Q. You mean it would spew out as it was opened up?

A. That is right.

Q. That was about the time Griesedieck Brothers part out this new type beer in April 1954, March or April 1954.

A. March or April, around in there.

Q. And, at the same time, there was a change in the label of the beer?

A. That is right.

Hearing Examiner Hier: What did you sell that new (393) beer for to the customers?

The Witness: Sir!

Hearing Examiner Hier: Did you charge the enstolner 30 cents a bottle or 20 cents a bottle of that new beer, Krausend?

The Witness: We charged the same as'we had been charging on it.

Hearing Examiner Hier: What is that?

The Witness: 25 cents.

Hearing Examiner Hier: 25?

The Witness: Over the bar; yes, sir.

Hearing Examiner Hier: How much do you have to drop the price of a bottle of beer to get a customer to switch, say a beer is selling for 30 cents?

The Witness: I would say if you dropped a nickel a bottle over the bar on most any beer you would probably pick up a great number of sales for some time, maybe a short period.

Hearing Examiner Hier: Would you retain them?

The Witness: It has never been my experience that you do.

Hearing Examiner Hier: A sampling process then!

The Witness: That is right. You can—I have seen time after time of cases where products, beers and others were sampled, and people will, through appreciation or occause they are interested in a change, maybe would fry it for a while, but (394) then it seemed like they nearly always go back to the original product.

Hearing Examiner Hier: Go on, Mr. Barton,

By Mr. Barton:

- * Q. Were there a significant number of customers whe complained about the Griesedieck beer in this 1954 period
- Well, I would say a significant number of the Griese dieck drinkers that switched off.
 - Q. And to what beers did they switch or did you notice!
- A. Well, during that period our Falstaff sales more than tripled, have more than tripled lines 1953, and our Stag has doubled; and, at the same time, Griesedieck has decreased.
- Q. So it is your conclusion that the Griesedieck drinkers have switched to Falstaff and Stag!
 - A. Evidently.
- Q. I notice on Exhibit 60 there are several different names as distributors of Griesedieck during that period. Would you explain what the various different titles across the top of the page mean?
- A. Yes. G and G Distributing Company was a distributor Griesedieck Brothers through March of 1952. At that time a company named McHenry Distributing Company, who operate in Springfield, Illinois, also took over the Peoria territory for Griesedieck Brothers, and they distributed Griesedieck through June of 1954.
- (395) At that time the Heller Provision Company became a distributor for Griesedieck Company, and they still have it.
- Q. When you were having complaints from your customers about Griesedieck Brothers beer being wild, did you say anything to your Griesedieck distributor about it?
- A. Yes. I, of course, told him and expected him to make the complaints on the beer good to me, I mean, the beer I lad to take back, which he did, and his explanation was of

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it that they had changed the formula, the brew on the beer, and they were having some trouble getting it squared around to where it was trouble-free.

- Q. Wno first contacted you with respect to your testifying here, Mr. Wombacher?
 - A. Mr. Cook, the local distributor for Budweiser.
 - Q. Have you talked to Mr. Ingamells and Mr. Hallquist?
 - A. Yes, sir.
- Q. And your expenses are being paid for coming here by Anheuser-Busch?
 - A. That is correct.
 - Q. Do you owe Anheuser-Busch any money of any kind?
 - A. No.
- Q. Do you have any relatives who are employed by Anheuser-Busch?
 - A. No.
 - Q. You are testifying here under subpoena, are you not? (396)—A. That is right.
 - Mr. Barton: You may cross examine.

Cross examination by Mr. Mayer:

- Q. Mr. Wombacher, how long have you handled Bud-weiser!
- A. Well, ever since we have handled—ever since we have been in business, which the business has been there since 1945. I went there in 1947.
 - Q. How did you purchase your Budweiser?
- A. Through the Brewers Distributing Company in Peoria.
- Q. Has that always been the distributor for Budweiser in that area?

John W. Wambacher, for Respondent - Cross

A. Yes, sir.

Q. Ever since you have been in business?

A. Ever since repeal.

Mr. Batton: If I may interrupt, I show you Exhibit 63, and ask you whether this is a summary of your total, of your gross sales for 1953, 1954, with per cent of decline, and your purchases of Griesedieck Brothers beer the samperiod, and also for the first ten months of 1954 and 1955.

(The document referred to was marked Respondent's Exhibit 63, for identification.)

The Witness: That is right.

Mr. Barton: I offer 63 in evidence.

Mr. Mayer: No objection.

(397) Hearing Examiner Hier: Admitted.

(The document referred to was marked heretofore for identification Respondent's Exhibit 63, was received in evidence.)

By Mr. Mayer:

- Q. Mr. Wombacher, do you have any figures here with you, sir, showing the purchases of all the different brands of the beer you handled during 1953 and 1954.
 - A. Purchase of all the beers? No, sir.
- (398) Q. In purchases, what is the rank of the beers in your store, in volume of purchases during 1955.
 - A. Comparing the one—
- Q. In volume compared one to the other. Who was the leading brand?
 - A. Falstaff.
 - Q. What is the second brand, and third, and so forth

John W. Wombacher, for Respondent -Cross

- A. The second brand, I believe, would be Stag; the third brand is Budweiser; fourth, Schlitz. Do you want me to go on!
 - Q. Is that true of 1954 as well as 1955?
- A. Yes, sir. I believe they would run just about the same.
 - Q. How about 1953?
- A. 1953, I believe, probably, Budweiser, I believe, at that time—even Falstaff was right up there, pretty close but Budweiser and Schlitz were closer to the Falstaff sales figures, their purchases at that time.
- Q. Have you ever been under any financial obligation to Auheuser-Busch?
 - A. No. sir.
- Q. Have you ever been under any financial obligation to the distributor of Anheuser-Busch!
 - A. No. sir.
- Q. Now, when you relayed your complaint to the Griesedieck Brothers salesman concerning the product, what did they do about it!
- (399) A. They made the beer good, and by that I mean that if a person returned some beer to us and we, in turn, gave them more beer, why, they would make it up to us, give us merchandise for it.
- Q. Did they replace that with more wild beer, or did the, replace that with a different type of beer?
- A. They replaced it. The beer looked the same in the package, and I can recall two or three instances where the same person would complain two or three times in a row, and from that I concluded that probably it was one batch of beer that probably the distributor had on hand in his warehouse, and we had in our store, and it just took a

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while to work it out, and after that, why, we didn't have any trouble with it.

- Q. In other words, the product trouble has stopped!
- A. Yes, sir.
- Q. When did it stop?
- A. I think it—like I said, it is probably just for maybe that one batch of beer, or that one shipment. It was a something that went on for month after month.
- Q. Would you say it was approximately a month or a month and a half, or something in that neighborhood?
 - A. That is right.
- Q. Did the Griesedieck salesman mention to you a new process involved in the manufacture of their beer?
 - (400) A. Yes, sir.
 - Q. Do you know what type of process that was?
 - A. Krausend.
- Q. Do you know what type of beer Budweiser is manufacturing, according to what process it is manufacturing.
- A. I have never heard it, I never heard it mentioned, I don't believe—
- Q. Mr. Wombacher, the Atlas Company, does it advertise its beer as a premium beer?
 - A. No, sir; I don't believe it does.
 - Q. How about Edelweiss?
 - A. No.
 - Q. How about Falstaff?
- A. Falstaff uses the word "premium" in their advertising.
 - Q. How about Stag?
 - A. No, sir; I don't believe so.
 - Q. What are the premium price beers that you handle!

A. Budweiser, Schlitz, Miller's, Pabst, Heileman's, Old Style, Hamms; I believe that about runs it.

Mr. Mayer: That is all we have.

Redirect Examination by Mr. Barton:

- Q. How about Blatz, do you handle Blatz?
- A. Yes, sir.
- Q. Where does Blatz fit into the price structure in your store!
- (401) A. Well, it is in kind of a place all by itself. It is a premium, supposedly a premium beer. However, we pay slightly more for it than we do for Stag, Falstaff and Griesedieck.
 - Q. What do you sell it at?
- A. We sell it at \$1.03 for a six-pack, a nickle more than Falstaff and Stag, and a nickle under the Budweiser and Miller's and Schlitz.
- Q. What was the situation in 1953 with respect to Blatz, if you remember?
- A. At that time, Blatz, we were selling it for a premium price, the same as Budweiser, Schlitz, and Miller's.
- Q. When did that switch take place between Blatz being sold as a premium beer and now in between Falstaff and Budweiser?
- A. It has more or less come about, I should say, in 1954, right around a year and a half to two years ago. Actually, the price structure on it has not changed too much; but by what is known commonly as a business deal, they give you free merchandise for certain purchases.
 - Q. And that permits you to sell it cheaper?
 - A. That permits us to sell it cheaper, yes.

Q. Do you have any experience, Mr. Wombacher, who how many of your customers are regular customers for a same type of beer every time they come in!

A. I would say 95 of our customers; there is very fir, change back and forth.

- (402) Q. Has there been any reduction in beer prices from the wholesalers to you since January 1, 1954 on the types of beers you handle?
 - A. Not since 1954, no, sir.
- Q. In other words, the last price change you had was when Budweiser, Schlitz, the national shipping beers, well up in October of 1953?
 - A. That is right.

Q. You say you have been in business now 9 years. What were you doing before that time?

Mr. Mayer: I object to this. This is not related to the original examination; this is redirect.

Mr. Barton: In part.

Hearing Examiner Hier: Sustained.

Mr. Barton: That is all.

Hearing Examiner Hier: Thank you, Mr. Wombacher

We will take a five-minute recess.

(A short recess was taken.)

Mr. Barton: Mr. H. F. Thompson.

(403) H. F. THOMPSON was thereupon called as a witness by Respondent and, having been first duly sworn by the Examiner, testified as follows:

breet Examination

Hearing Examiner Hier: What is your name, sir? The Witness: H. F. Thompson.

Bu Mr. Barton:

- Q. Where do you reside, Mr. Thompson?
- A. 1831 South Garrison, Carthage, Missouri.
- Q. Carthage, Missouri! What is your business!
- A. I am in the package liquor business.
- Q. Where is your business located?
- A. At 319 South Garrison in the same city.
- Q. How large a town is Carthage?
- A. Oh, about 11,000, I think is about what it is.
- Q. How far is it from St. Louis?
- A. Oh, approximately 300 miles.
- Q. How long have you engaged in the package store business?
 - A. Since the early part of 1946.
 - Q. What did you do prior to that time?
 - A. I operated a restaurant for a little while before that.
 - Q. Pardon?
- A. I operated a restaurant before that, and then before that, in 1945, I was discharged from the service.
 - Q. What branch of the service were you in?
 - (404) A. Air Corps.
- Q. What products other than beer and liquor do you sell?

A. Just the necessary items engaged in that business It is classified as a tobacco store.

Q. What brands of beer do you sell?

A. We have Stag, Falstaff, "Griese", Budweiser, Schlitz, Miller's High Life, Pabst-1 forgot one-Muchbach.

I have got a bunch, what I consider "dogs," that I have got in there, Muchlebach and a few of the other beers. I can't think of them right now,

Hearing Examiner Hier: Mr. Thompson, will you speak more slowly,

The Witness: Yes, sir.

Hearing Examiner Hier: It is somewhat difficult for the reporter to catch all these proper names in rapid conversation.

The Witness: All right.

By Mr. Barton:

Q. Mr. Thompson, have you produced a list of these various purchases of beers you handle and which you named for 1953, 1954 and 1955, broken down by morth!

A. Yes, I have.

Mr. Barion: May I have it, please?

(The documents were marked Respondents Evhibit 64-A through H, inclusive, and Respondent's Exhibit 65-A through C, inclusive for identification.

(405) By Mr. Barton;

Q. You supplied Exhibit 64-A through H as your purchases of your brands that you named in those years, did you not?

A. I did.

Q. Is 65 A through C, Exhibit 65-A through C, a summary of your purchases of those brands, 65-A being a summary by years of those brands, and 65-B and C being a summary of those brands by months of each of the years!

A. They are.

Mr. Barton: I offer in evidence 64-A through H, and \$5 A through C.

Mr. Mayer: I have no objection.

Hearing Examiner Hier: Admitted.

(The documents referred to, heretofore marked Respondent's Exhibits 64-A through II, and 65-A through C for identification, were received in evidence.)

Ba Mr. Barton:

- Q. Do you wait on the trade yourself, Mr. Thompson, in your place of business?
 - A. Yes, sir.
 - Q. How many other employees do you have?
 - A. One, actually, that can be considered an employee.
 - Q. What was your highest selling brand in 1953?
 - A. Griesedieck.
- (406) Q. And approximately what percentage of your businss did it account for, your beer business?
 - A. About 43 per cent.

Mr. Mayer: Mr. Examiner, we are in the same area of the questioning again. I think the exhibits are going to show all the figures asked by the supplier's counsel.

Hearing Examiner Hier: Do they, Mr. Barton?

Mr. Barton: Yes, they do, and we can go to a general question which, I think, will save a lot of time.

Ba Mr. Barton:

- Q. Mr. Thompson, what is the fact as to whether or not your Griesedieck Brothers beer declined in 1954 against 1953?
 - A. What is the fact, you ask?
 - Q. Yes.

A. Oh, just generally the decline came in the latter part of 1954, the greatest decline, and I think it was mainly due to that Krausend beer they put out. We had, oh, it was more or less of a local ribbing on that, on that particular name of a beer. They wanted to know what in the world "Krausend" meant, and that is the only reason I know of that any decline happened at all.

Hearing Examiner Hier: Let us get this name straightened out.

The Witness: Krausend, I don't know how to spell it. (407) Mr. Barton: Your Honor, it is pronounced according to the advertisement "Kroysend".

Hearing Examiner Hier: "Kroysend".

Mr. Barton: Apparently there was a different prenounciation given to it by the Illinois purchaser than Missouri. The fact is in the advertisement which has been marked in evidence, the pronounciation which is indicated by G.B. is "Kroysend", is the reference in the advertisement.

Bu Mr. Barton:

- Q. Was there a play on the word "Krausend" by some of the purchasers?
- A. Oh, yes, just general ribbing was the main thing, you know, wondering what they were going to do next, and that all came even within the fancy cans and things of that nature, you know. My customers wanted beer; they didn't

care what kind of a can it came in. It was not displayed, and we would shell them out six at a time.

- (408) Q. Mr. Thompson, did you or did you not receive complaints from your customers in 1954, about the quality of Griesedieck Brothers beer?
 - A. I did.
 - Q. What were the nature of those complaints?
- A. Most of them just tasted green to them—that was about all.
- Q. In other words, your customers would—were these people who had been buying Griesedieck Brothers beer from you in the past, who made complaints?
- A. All of them were, yes. I can't name anyone of them, but they were all baseball fans also, another deciding factor there.
- Q. What is this baseball, what is the reference to baseball in connection with their drop off in sales?
- A. Not having the baseball team, I mean, you know, they all prefer the Griesedieck as baseball beer.
- Q. Do you mean by that the Griesedieck Brothers had broadcast the Cardinals in 1953 and prior years?
 - A. Yes.
 - Q. And in 1954 they did not?
- A. Well, I don't know about—they didn't do it in 1954. Frankly speaking, I can't tell you whether they broadcast a game in 1954 or not, now that you mentioned it.
- Q. Do you attribute part of their loss of sales to their (409) not broadcasting the Cardinals?
- A. That is what I am speaking of, the current date, as of now, I mean, my reference was to that.

Hearing Examiner Hier: I don't get this. Do you mean to tell me that if Griesedieck Brothers beer is broadast at the same time that the Cardinals games go on the television programs and then they change to Miller, why

everybody, a good proportion of the people that look at the televised broadcast of the games of the Cardinals change to Miller. I don't understånd that.

The Witness: . I am making the statement in respect to my own personal—

Hearing Examiner Hier: I understand that.

The Witness: -business.

Hearing Examiner Hier: Yes.

The Witness: That was the reason why it happened that way, because the boys stayed, they buy premium priced beer. They always have. The majority of them that have quit Griesedieck have, gone back to premium priced beer, and which is Budweiser and Schlitz, my two best sellers.

Hearing Examiner Hier: One of the reasons for that, you say, is that Griesedieck quit associating its name with the Cardinals, on a televised broadcast?

The Witness: That is the fact, in my estimation.

By Mr. Barton:

- (410) Q. That is on the radio broadcast?
- A. That is on the radio broadcast.
- Q. In other words, what you are saying is that the fact of Griesedieck Brothers no longer broadcasting the Cardinals name, was one of the influences on its business!
 - A. That is right.
- Q. When the customers who had complained about Griesedieck Brothers beer came in, what did they say to you, what was their complaint?
 - A. "What is wrong with that beer?"
- Q. Did they make any description of it? Did they say in their words what was wrong with it?
 - A. Just "green beer", that was all.

- Q. What do they mean by "green beer"?
- A. That is a term. I don't know, either.
- Q. But that is what they said?
- A. Yes.
- Q. Were you familiar with the fact that Griesedieck Brothers came out with a Krausend—you were familiar with the fact that they came out with this Krausend beer in 1954?
 - A. The advertising told me so, yes.
- Q. It was about that time that the complaints came from the customers?
 - A. Almost simultaneously.
- Q. Has there been any change in the price of Budweiser or (411)—the other beers which you sell since January 1, 1953, that is, in the price to you?
 - A. None.
 - Q. And at what price do you sell 6-pack Budweiser?
 - A. \$1.10.
 - Q. \$1.10?
 - A. Yes.
 - Q. What price do you sell Falstaff, Stag, Griesedieck?
 - A. \$1.05.
- Q. How many different prices do you have as price classes—you have the Budweiser, the Miller price, that is the \$1.10 price.
 - A. \$1.10.
- Q. Then you have Griesedieck, Falstaff, Stag—that is \$1.05?
 - A. Yes.
- Q. Do you have any other brands that sell cheaper than that?
 - A. No.

H. F. Thompson, for Respondent-Cross

- Q. Do you know what price—do you handle Hammsbeer?
 - A. I just got it here recently.
 - Q. What price do you sell Hamms at?
 - A. Premium price, \$1.10.
- Q. Who first contacted you about being a witness in this case?
 - A. Mr. Clyde Love.
 - Q. Who is he?
 - (412) A. Local distributor.
 - Q. For whom?
 - A. Budweiser.
- Q, Have you talked with Mr. Ingamells and Mr. Hall quist?
 - A. I have.
 - Q. Are you indebted in any way to Anheuser-Busch!
 - A. None.
- Q. Is Anheuser-Busch paying your expenses to comto Washington?
 - A. They are.
- Q. You are testifying pursuant to subpoena, are you not?
 - A. I am.
 - Q. Are you related to any employee of Anheuser-Busch!
 - . A. No.

Mr. Barton: I believe the exhibits have already been offered and received in evidence. You may cross-examine.

Cross examination by Mr. Mayer;

Q. Mr. Thompson, directing your attention, sir, to the exhibit which is Respondent's Exhibit 65-A, does that represent all of the brands of beer handled by your store?

H. F. Thompson, for Respondent-Cross

- A. Except for the two recent ones, Muchlback and Hamms, which are not any good in this figure here. That only went so far as the 1st of November.
 - Q. And are your sales, sir, confined to off premise sales?
 - (413) A. Only.
- Q. How many such off premise outlets are there in Carthage, Missouri?
 - A. Four.
 - Q. How long have you been offering Budweiser for sale?
 - A. Since 1946.
 - Q. How do you purchase your Budweiser?
 - A. From the local distributor, by truck.
 - Q. He delivers to your door?
 - A. Delivers by truck, yes, sir.
- Q. Is it a call system—does he call on you regularly and take your order at your establishment?
 - A. Yes, once a week.
- Q. Now, sir, just when was the Krausend process introduced by Griesedieck Brothers into your establishment?
- A. The first day that they brought it down there, and I think it was March, I believe, or April. I have forgotten now.

Mr. Barton: That is of 1954.

The Witness: That was 1954, yes.

By Mr. Mayer:

- Q. Did you have some complaints about that type of beer?
 - A. I did.
 - Q. What did you do about them?
 - A. Told them I was sorry, out of my control.
- (414) Q. Did you report it to the Griesedieck Brothers salesman?

H. F. Thompson, for Respondent-Cross

- A. I did.
- Q. Does he call on you regularly?
- A. About three or four times a week.
- Q. What did he do about it, sir?
- A. Nothing that I know of.
- Q. Did he replace any of it for you?
- A. No, I didn't replace any for anybody else.
- Q. Was the Krausend process withdrawn by Griesedieck Brothers from your store?
 - A. No, I still continue to sell it.
- Q. You still continue selling Griesedieck Brothers beer brewed by the Krausend process, advertised by Griesedieck?
 - A. Yes.
- Q. Do you know what process Budweiser is brewed according to?
 - A. No, sir, I don't.

Hearing Examiner Hier: What process is it brewed by? This is the third time a man has been asked this question. Let us get it in the record.

Mr. Barton: We will have a witness on the stand. We will bring it out.

Hearing Examiner Hier: All right.

Mr. Mayer: That is all we have, Mr. Examiner.

Hearing Examiner Hier: Mr. Thompson, have you had (415) any experience in your package store which would qualify you to tell me whether or not a nickel difference on a 6-pack beer package, would make any difference?

The Witness: Frankly, sir, not at my location, I don't think it is of any importance whatsoever.

Hearing Examiner Hier: All right.

H. F. Thompson, for Respondent—Redirect Kenneth Blair, for Respondent—Direct

Redirect examination by Mr. Barton:

Q. What type of location are you in?

A. I am in a package liquor store, drive-in service. There is no inside traffic hardly at all. I just got one price for each classification. They come up and get it. They ask for their own personal brand of beer and we have got it for them and they are gone. That is all there is.

Q. Are you in a high economic area, that is in the part of town in which you are located?

A. I consider my clientele a little higher class, in other words.

Hearing Examiner Hier: Anything more.

Mr. Mayer: No, no.

Hearing Examiner Hier: You are excused.

(Witness excused.)

Mr. Barton: Mr. Kenneth Blair.

KENNETH BLAIR was thereupon called as a witness for the Respondent and, having been first duly sworn, testified (416) as follows:

Hearing Examiner Hier: What is your first name? The Witness: Kenneth Blair, B-l-a-i-r.

Direct examination by Mr. Barton:

- Q. Mr. Blair, what is your residence?
- A. 3101 South Adams, Peoria, Illinois.
- Q. What is your business?
- A. I am in a tavern and package liquor.

- Q. And what brands of beer do you handle in your tavern and package store?
- A. Well, I handle the most popular premium beers and most popular lower priced beers.
- Q. Are there several price levels at which those beers are sold?
 - A. There is.
 - Q. What are those price levels?
 - A. 20¢, 25¢ and 30¢.
 - Q. The 30¢ beers are?
- A. Budweiser, Schlitz, Pabst, Millers, Hamms, and Blatz.
 - Q. Do you handle Old Style?
 - A. Yes.
 - Q. That is a 30¢ beer?
 - A. Yes.
 - Q. The 25¢ beers are what?
 - (417) A. "Griese", Falstaff, Stag, and Busch Lager.
 - Q. The 20¢ beers are?
 - A. Gipps and Star Model.
- Q. Do you notice any change in your Griesedieck Brothers business since 1953?
 - A. I have.
 - Q. What has been the nature of that change?
 - A. I had a decline in sales.
- Q. How many cases did you usually have on hand of Griesedieck Brothers beer in 1953 as a general rule!
- A. Well, I most generally carried 25 to 30 cases of pints and maybe 10 to 15 cases of 24 packaged cans.
 - Q. What do you keep on hand now?
 - A. Four to five cases of pints and two cases of cans.

- Q. And when did that change in your Griesedieck sales take place?
 - A. I would say early in 1954 it started down bad.
- Q. And what, if any, reaction did you have from your customers about at that time that it started down?
- A. Well, I had—I have a family tavern, and I know all of my customers. I can call them by their nicknames. I know when the kids are sick or anything. My cook in the tavern drank Griesedieck all of the time. So they changed the label. She said I gave her a different type of beer.
 - "Next time I don't want any more of that", she said.
 - (418) I showed it to her before.
 - "What is the matter with it?"

She said, "Something wrong with it. It is spoiled."

So I tasted it myself. And I don't drink Griesedieck or I don't drink a lot of any kind of beer. My reaction was that it tasted bitter like a copper, like a can of tomatoes that had been opened or peas, for a while.

- Q. When was that?
- A. That was in the spring of 1954, I believe.
- Q. Was that about the time that your Griesedieck Brothers sales dropped on??
- A. That is when it started down. Right quick it did start down. When Vi quit, it did start down.
- Q. To what brands did the customers who had been drinking Griesedieck Brothers switch in your tayern?
 - A. Primarily they went to Falstaff, Stag.
- Q. Have you brought a tabulation showing your purchases of the various brands of beers which you handed in 1953 and 1954?
 - A. I have.
 - Q. 1952, 1953 and 1954?
 - A. I have.

Hearing Examiner Hier: The next number is Exhibit 66. How many pages do you have there?

Mr. Barton: One page.

(The documents referred to were marked Respondent's (418-A) Exhibits 66 and 67, for identification.)

Mr. Barton: Exhibit 66 is a tabulation of the actual cases, and draft beer purchased on each of these brands in 1952, 1953 and 1954.

Exhibit 67 is a summary of those figures which shows the percent of total of each of the brands in the business and the change from year to year.

By Mr. Barton:

Q. Exhibit 66 was made up by you, was it?

A. Yes, sir.

Q. And Exhibit 67 is an accurate summary of the figures on Exhibit 66, is it not?

A. Yes, sir.

Mr. Barton: I offer in evidence Exhibit 66 and 67.

Mr. Mayer: May I ask a question?

Examiner Hier: Yes.

Mr. Mayer: Who compiled Exhibit 67?

The Witness: Which is 67?

Mr. Mayer: This one-who made this?

The Witness: I believe my bookkeeper had something to do with that.

Mr. Mayer: Was it made under your supervision!

Mr. Barton: No, this was made by us.

The Witness: Those are my figures. I haven't seed it yet.

(419) Mr. Mayer: You haven't seen it yet?

The Witness: Let me look at it. May I see that other one, please, too?

Mr. Mayer: I am sorry.

The Witness: These are my actual figures.

Mr. Mayer: Who did you say prepared No. 67?

The Witness: I believe someone prepared it for me and gave me those percentage figures. I only have them case wise.

Mr. Mayer: Who was someone now, sir?

The Witness: I don't know. Mr. Hallquist -did he figure this for me? Yes, sir.

Mr. Mayer: We have no objection. Hearing Examiner Hier: Admitted.

(The documents heretofore marked Respondent's Exhibits 66 and 67 for identification, were received in evidence.)

By Mr. Barton:

- Q. Mr. Blair, the people, your customers whom you say you know all of them that come in, have they gone back to Griesedieck Brothers after they left?
 - A. No, sir, they have not.
 - Q. You personally wait on the trade in your tavern?
 - A. I do.
- Q. What is the fact as to the regularity with which the (420) customers order the same brand of beer time after time when he comes in?
 - A. When he opens the door I can open the bottle.
- Q. Did you hear any play on words by your customers with regard to this term "Krausend"?
 - A. Vi nicknamed it to "poison."

- Q. In other words, there was a play on the word "Krausend."
- A. There was—it was not too much—like I say, I have those real close people to me, and they name it "poison" and they have different names. My Griesedieck distributer told me that Krausend means "aging."
 - Q. Means what?
- A. Means "aging." I can't find it in the dictionary but that is what he told me.
 - Q. Who is paying your expenses to come here!
 - A. Anheuser-Busch.
- Q. How were you first contacted with respect to test fying here?
- A. From Gene and Mel Cook in Peoria, Illinois—the are my distributors.
 - Q. Your Budweiser distributors?
 - A. Yes.
 - Q. Are you indebted in any way to Anheuser-Busch
 - A. No. sir.
- Q. Do you have any relatives who are employees # (421) Anheuser-Busch?
 - A. No, sir.
- Q. You are appearing here pursuant to subpoena, as you not?
 - A. Yes, sir.
- Q. Did you have any experience with wild beer in the Griesedieck beer that you received?
 - A. Some I did.
 - Q. When was that?
- A. That was in early 1954, also, I believe at the same time.

Q. What is the fact, Mr. Blair, as to the effect which one of your customers getting wild beer or bitter tasting beer would have on future purchases of that brand even if the brand returned to normal?

Mr. Mayer: Objection, unless the question is confined to his particular knowledge of that particular customer involved.

Mr. Barton: That is what it is.

Hearing Examiner Hier: All right. Take the amendment.

The Witness: What was the question?

By Mr. Barton:

Q. What is the effect on a customer of yours who has been drinking a brand regularly like Griesedieck, and then (422-432) they got some wild beer or some beer that tasted bitter, with respect to their future purchases of that brand when it might return, and lost that difficulty?

A. They would definitely quit, I believe.

Hearing Examiner Hier: Wait a minute. Did they or you believe that?

The Witness: They did.

By Mr. Barton:

- Q. In other words, they haven't returned to Griesedieck Brothers lately?
- A. Have not. Vi has never drunk another bottle of Griesedieck.
- Q. I notice that your sales of Griesedieck Brothers in 1953 were 500 cases. How many customers would you say that 500 cases represented?
 - A. I would say 10 to 12.
 - Q. 10 to 12 customers?

- A. Yes, sir.
- Q. How many of those customers switched between 1955 and 1954?
 - A. Definitely two.
 - Mr. Barton: That is all.

Cross-examination by Mr. Mayer:

Q. Mr. Blair, would you give us the names of the two customers that switched?

(433) A. Violet Brown and Verne Hanson.

Q. Is it Miss Brown?

A. Mrs. Brown.

Q. Is she still employed by you, sir?

A. No, sir. She is in every day.

Q. She is?

A. Every day.

Q. Now, sir, how long have you handled Budweiser. Mr. Blair?

A. Since May 1951.

Q. How long have you been in the liquor business!

A. Since May of 1951.

Q. Do you sell on and off premises?

A. Yes, sir.

Q. How many taverns—would that be the proper name for it, sir!

A. Yes, sir.

Q. How many taverns similar to yours are there in Peoria, Illinois?

A. 240.

Q. 240?

A. Yes, I think that is right. Might have lost a couple

Q. And how do you purchase your Budweiser beer, sir

- A. Just like all of my other distributors, once a week, only Budweiser I have draft beer and I get twice a week service.
- (434) Q. You buy it through the Budweiser distributors?
 - A. Yes.
 - Q. What is the name of it?
 - A. Brewers Distributing Company.
- Q. Do you purchase all of your other beers which you offer for sale through the distributor, sir, rather than direct from the factory?
 - A. We have one from the factory. That is all.
 - Q. Which one is that?
- A. Gipps Brewing Company and they are out of business now.
- Q. Directing your attention to Respondent's Exhibit 67, does that represent all of the beers sold by your company?
 - A. No. sir.
- Q. What other beers do you offer for sale, sir, or did you in 1954?
- A. I gave them to him, Star and Gipps and Hamms is not on there, Old Style not on there? I took my five leading beers or six, whatever they are there.
- Q. In other words, the percentages on Exhibit 67 are related only to the total sales of those five beers, not total sales of the beers in your store?
 - A. These are the total sales of these five only.
- Q. Mr. Blair, was there any explanation given to you by the Griesedieck salesman concerning the introduction of a new processed beer in the Spring of 1954?
 - (435) A. Yes, there was.

- Q. And did you register any complaints with him or cerning that beer?
 - A. I registered complaints.
 - Q. What did he do about it?
- A. Just a minute. You asked me was there introduction of the beer to me.
 - Q. Yes, sir.
- A. They piled some cases up and put the big sig "Krausend" and took my picture by it. I still have?
- Q. I understand in disposing of that beer, as I understand it, you received several complaints concerning to quality of the beer?
- A. Not right off hand. Within a week or so I did is cause I had the old label and we rotate beer, old on top at new underneath.
- Q. What did the Griesedieck salesman do about the complaints?
- A. He did nothing. At that time we changed distributors again. We had three there, we have had three different distributors in three years.
- Q. As I understand it then, almost coincidental with the introduction of the Krausend process Griesediese Brothers also changed distributors in Peoria!
- A. Not right at the time, no, a little later right atter (436) Krausend took place.
- Q. And the new distributor did nothing about the complaints which you registered?
- A. I don't know what he did. He didn't do anything to me. I just told him that the customers said that it was spoiled, it was sour, it was bitter taste. And he said, "I believe it is in your mind, we haven't any other complaints."

So I took it on myself to find some more information. I mean I have some friends, I was secretary of a little organization we have, and we discussed it at meetings, that Griesedieck sales was down in all of the taverns in my neighborhood.

- Q. Was the Krausend type process beer withdrawn by fitiesedleek!
 - A. I don't know.
- Q. Is it still selling beer brewed according to that proc.
- A. I don't think they have buying signs like they did. Right across the street from me there was a big billboard, "It is Krausend." That is gone. I don't look out of the wirdow every day, out of the window every day and see that any more,
- Q. Do you know what process Budweiser is brewed according to?
 - A. Only what it says on the label.
 - (437) Q. What is that, sir?
 - A. Choices barley, malt, rice and malt,
 - Q. That tells you what is in it.
 - A. It says on the label.
- Q How about the brewing process by which it is brewed:
 - A. I don't know how it is brewed.
 - Mr. Mayer: That is all.

Hearing Examiner Hier: Do you sell some beer over the counter, over the counter at 30c and other beer at 25c?,

The Witness: Yes.

Hearing Examiner Hier: Why?

The Witness: Because it costs more per case.

Kenneth Blair, for Respondent-Redirect

Hearing Examiner Hier: How much more per botto does it cost?

The Witness: Well, Stag, per bottle, Stag is see a case and Budweiser is \$3.74, I believe.

Hearing Examiner Hier: I can't divide 24 into the so rapidly.

.The Witness: It amounts to about a penny and half-more a bottle when you sell at 30c.

Hearing Examiner Hier: So you make more metaby selling premium priced beer?

The Witness: Very little, \$6.00.

Redirect examination by Mr. Barton:

(438) Q. In connection with Exhibit 67 and the berwhich are listed thereon, what percentage of your totabeer business is Budweiser of the five?

A. I would say that is 85 percent of all of them.

Mr. Barton: Thank you.

Hearing Examiner Hier: Anything more from the witness?

Mr. Barton: No.

Hearing Examiner Hier: Thank you, Mr. Blair. (Witness excused.)

RAY WILKES was thereupon called as a witness for the Respondent, and having been first duly sworn, testified as follows:

Hearing Examiner Hier: State your name, sir. The Witness: Ray Wilkes.

Direct examination by Mr. Baker:

- Q. Mr. Wilkes, will you give us your home address, please?
 - A. 1906 Pearl Avenue, Joplin, Missouri.
 - Q. In what type of business are you engaged?
 - A. Tavern operator,
 - Q. And what is the address of your tavern?
 - A. 1802 South Main, Joplin, Missouri.
 - Q. How far is Jeplin, approximately, from St. Louis?
 - A. Well, about 304 miles, I believe, is the exact.
- (439) Q. In your tavern do you sell for on premise consumption only?
 - A. No, I also sell for take out.
- Q. How long have you been at this present business address?
 - A. It will be five years next October 1st.
 - Q. You are the owner of the business?
 - A. I am.
- Q. Mr. Wilkes, have you prepared figures showing your purchases of beer for the years 1953, 1954 and 1955?
 - A. I have.
 - Q. May I have them, please?
 - A. Yes.

Hearing Examiner Hier: All right, this is marked for identification at the request of counsel, Exhibits 68-A, 68-B and 68-C, the witnesses purchases of Falstaff beer during the years 1953, 1954, and 1955. And as Exhibit

69-A, 69-B and 69-C, the same thing for Blue Ribbon Palst And as Exhibit 70-A, 70-B and 70-C, the same thing for Stag.

And Exhibit 71-A through 71-D, the same thing for Budweiser, plus 1955 purchases of Busch.

And as Exhibit 72-A and 72-B, the same thing for Fox head Ale.

And as Exhibit 72-A, 73-B and 73-C, the same thing for Country Club Beer.

(440) And as Exhibit 74-A, 74-B and 74-C, the same thing for Millers High Life.

And as Exhibit 75-A, 75-B and 75-C, the same thing for Muchlbach Beer,

And as Exhibit 76-A, 76-B and 76-C, the same thing for Schlitz.

And as Exhibit 77-A, 77-B and 77-C, the same thing for Griesedieck.

(The papers referred to were marked Respondent's Exhibits 68-A, 68-B, 68-C, 69-A, 69-B, 690, 70-A, 70-B, 70-C, 71-A, 71-B, 71-C, 71-D, 72-A, 72-B, 73-A, 73-B, 73-C, 74-A, 74-B, 74-C, 75-A, 75-B, 75-C, 76-A, 76-B, 76-C, and 77-A, 77-B, 77-C for identification.)

By Mr. Baker:

Q. Did you personally prepare these?

A. My wife and I, yes.

Q. Does this represent all of your beer purchases for the time period shown?

A. Yes.

Mr. Baker: I offer these.

Mr. Mayer: No objection.

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Ray Wilkes, for Respondent-Direct

Hearing Examiner Hier: Received. They will be admitted in evidence then.

(The papers referred to, heretofore marked for identification Respondent's Exhibits 68-A, 68-B, 68-C, (441) 69-A, 69-B, 69-C, 70-A, 70-B, 70-C, 71-A, 71-B, 71-C, 71-D, 72-A, 72-B, 73-A, 73-B, 73-C, 74-A, 74-B, 74-C, 75-A, 75-B, 75-C, 76-A, 76-B, 76-C, and 77-A, 77-B, 77-C, were received in evidence.)

Bu Mr. Baker:

- Q. Do you have with you a recapitulation that I handed to you yesterday afternoon and asked you to check against these figures!
 - A. I believe I have. Is this what you are referring to!
- Q. Yes. Have you checked this recapitulation against your figures! Are you satisfied that it is correct!
 - A. I am satisfied. It checked out.

Hearing Examiner Hier: That will be Exhibit No. 78.

(The paper referred to was marked Respondent's Exhibit 78 for identification.)

Re Mr. Baker:

- ". Without going into great detail, Mr. Wilkes, Rx78 shows, does it not, that your total beer business went down percent in 1954 over 1953, but that your Griesedieck business went down 31 percent. Is that correct?
 - A. That is right.
- Q. And it further shows that the real decline in Griese-deck began in March of 1954, does it not, with a 28 percent decrease?
 - (442) A. 28.35, yes.

- Q. Then that built up to July decline of 48 percent, a September 58 percent, is that correct?
 - A. That is right.
- Q. Generally, how were your Falstaff purchases in 1955, 1954 and 1955?
- A. Falstaff, they went way up in sales, they increased. I'd say, 40, 45, maybe 50 percent.
- Q. Mr. Wilkes, to what do you attribute the decline setting in in March of 1954 in your G.B. purchases and sales!
- A. Well, I contribute that to complaints from the customers.
- Q. What were the nature of the complaints that you received.
- A. Some of them complained that the beer was new beer, that the beer was green beer, and some of them didn't like the idea of Griesedieck taking that baseball broadcast out of that territory up there in Jasper County, that is the county that Joplin is in, and then four or five of the, my regular customers, of course I have a family neighborhood tayern—they complained about contracting a dysentery effect from this beer. They claim it gave them a running-off.
 - Q. Then they switched and went off, quit purchasing
- A. Yes. Most of them went to Falstaff. Some of them went to Stag.
 - Q. Do you remember who some of those people were!
- (443) A. Yes, I remember them: Konk Kelly, Rusty Quillan. I could name four or five others that comes in there every day, just every day. And I happened to know that they switched over because they had always been Griesedieck, and I thought, well, my goodness, why the

decrease in my sales here, and I got to asking some questions, and they told me, told me that it was either new beer or green beer.

And Rusty and them boys, and Red King was one that told me, I don't know he took some milk and hot milk and nutmeg to check it and we conversed on it and that is it.

So in the meantime, I went to check it, and Falstaff had increased practically about the same amount that Griesedieck had decreased. So I just—

Q. Did you report this to your distributor of Griese-dieck?

A. Yes. I reported to, oh, after I started getting quite a few complaints, I reported to my distributor who at that time was Colombo Massey, and he said, "Well, I don't know what to do about it, Ray." He said, "I am getting out from underneath the headache because I am selling my business over to Frank Evans, Jr.

So he says, "It is his baby and his headache from now on."

Q. Did you report to the new distributor?

A. I did. He came by and introduced himself and I told him, I said, "I am not doing as good with Griesedieck as I used to (444) do, I am getting quite a few complaints about the beer being green and different other things." I said, "Have you have any other complaints?"

He said, "Yes," but he thought it was—he says, "I think it is this one carload that we have got." "But", he said, "I don't know what is wrong with the beer or anything, but", he said, "I have had several other complaints down the street." I think he was referring to some other tayerns,

Q. Did you ask for any adjustment or had you take back any beer?

A. I asked for some adjustments, oh, not very many of them, that pushed the beer like that and, if they took something else, I gave it to them, providing it was at the same price, the 20¢ can of beer.

And then I kept them all up in there and when the distributor sent his regular routeman around

Q. Let me ask you this, Mr. Wilkes: Have you ever had any occasion to make a complaint to any other ditributor under such circumstances?

A. Well, no, not under those circumstances, no. Occasionally I have pulled a cap on a bottle of beer and it probably not be. Millers High Life have quite a few exaccount of they tell me it is on account of being put up it a glass bottle, plain bottle, you see. Now, the beer would be flat or something. You could tell it when you would pour it out. It would have no (445) head to it. But not like—no complaints like I did have from Griesedierk.

Q. During 1954, Mr. Wilkes, at what prices over the bar were you selling Falstaff, "Griese", Stag. Budwelse and Schlitz?

A. 20c a bottle and 20c a can.

Q. For all of them?

A. Yes, uh uh.

Q. Including Budweiser?

A. No, no. Budweiser and Blue Ribbon and Schlitz and Millers High Life is what I call premium beer and I set 25c for it and 25c for it in cans. That is the beer that I do handle. I don't handle Millers High Life or Palst Blue Ribbon in cans any more.

Q. Did you try the Griesedieck beer yourself when you got customer complaints?

A. No. I don't drink one of them, you see, I pull the early morning shift. I never drink when I am on duty.

Q. You tend bar yourself?

A. I do, I open up and work from 7:00 o'clock in the morning until 5:00 in the evening.

Q. What percent of your customers that come in during the average day would you say you know by their first names!

A. I'd say 97 percent of them.

Q. And can you reach for a bottle when they come in the (446)—door?

A. Sure, that is 95 times out of 100 I can figure out what Rusty or John or Harry or Tom is going to take.

Q. Those people that switched from Griesedieck, are they steady now with another beer? I think you mentioned they went to Falstaff, some of them.

A. Yes.

Q. Are they steady with them or do they jump around and try one and then another?

A. No, they go along pretty good. Some have switched over to Budweiser beer on account of Harry Carey—that family tayern around, that tayern is quite a baseball and sport corner up there. And it is the same way. I had a few people that was drinking Pabst, Blue Ribbon. Well, down in our territory they eliminated the Wednesday night fight, which was put on by Pabst Blue Ribbon and some of them got sore about it and quit drinking Pabst Blue Ribbon on that account.

Q. Mr. Wilkes, who first talked to you about the possibility of testifying in this case?

- A. Budweiser distributor in Joplin, Clyde Love.
- Q. You have talked to Mr. Hallquist and Mr. Ingamells, haven't you?
 - A. Yes.
- Q. And Anheuser-Busch is paying your expense to Washington?
 - A. That is for sure, I hope.
- (447) Q. Are you indebted financially or otherwise to Anheuser-Busch?
- A. No, not indebted to any of them. I pay cash and carry.
 - Q. Are you testifying here under subpoena?
 - A. Yes, sir.
- Q. Are you related to any employees of Anheusers Busch?

A. No.

Mr. Baker: That is all. You may cross-examine.

Hearing Examiner Hier: You have given us the reasons why they quit drinking Griesedieck beer in your place. Why did they go to Falstaff instead of Budweiser, Millers. Pabst, etc.?

The Witness: Well, your Honor, I believe it is on account of it being the same price as Griesedieck was. It is a 20c beer.

Hearing Examiner Hier: You sold some other 200 beers there, didn't you?

The Witness: I sold Stag and Country Club, yes.

Hearing Examiner Hier: Why didn't they go to Country Club, do you know?

The Witness: No.

Hearing Examiner Hier: Why did they switch to Fal staff?

Ray Wilkes, for Respondent-Cross

The Witness: The only thing, the only reason why I can say they switched over to it was on account of the (448) distributor down there is pretty well liked man.

tress Examination by Mr. Mayer:

- Q. Mr. Wilkes, how many liquor outlets similar to yours are there in Joplin?
- A. There is 56—I believe it is 56 or 58 of them on Main Street. I don't know about off main street. I don't know how many more there is. There is probably 250 in the entire town. That is, package stores. That is what you are referring to?
 - Q. Package stores or taverns?
 - A. I would say around 250, something like that.
- Q. And as I understand it, in the operation of your tavern you sell both on and off premises, do you not?
 - A. That is right.
 - Q. How long have you handled Budweiser?
 - A. About a year and a half now. You mean on tap?
 - Q. No, sir, in cans or bottles or anything.
- A. About going on five years, every since I have had the saloon, I have had Budweiser canned, Budweiser bottled beer.
 - Q. Do yo have Budweiser now on tap?
 - A. I have had it now for little over a year.
 - Q. What did you have prior to that?
 - A. Schlitz.
 - Q. How do you purchase your Budweiser beer?
 - (449) A. Driver calls on me every morning.
 - Q. That is for either the draft or the package beer?
 - A. Draft and package.

Ray Wilkes, for Respondent-Cross

Q. In answering the examiner's question, Mr. Willies, I took it from the answer that in your tayern you have several price conscious customers that the switch was free, one 20c to another rather than the premium priced been

A. What I meant by that, most of my customers consist of working boys. And five and ten cents difference on prices on beer or whiskey makes a big difference around the You would actually be surprised how many will drink a 250 beer instead of a 25c beer. Most of the places downtow now they get 25c and 30c but I am up there this side, we there are two bakeries and Vickers plant, manufacturer of airplane parts for the government.

Q. Then as I take it then the 5 cents difference in the price is enough to influence the selection of the beer by the customers in your tayern which beer they will Lay!

A. Well, I won't say it influenced them too much. But, Your Honor, the way that he put it to me he asked me the reason why, I thought they went to Falstaff, and I thought the 20 cent price on Falstaff helped a little bit and then I thought that the distributor was such well known and popular fellow down there that he swung it over little bit too.

Q. Directing your attention, sir, to your G.B. purchases (450)—month by month 1953 and 1954 on Respondent's Exhibit 78, how do you account for the 48 percent decrease in June or in July that is the ten percent decrease in August, and the 58 percent decrease in September.

A. Weather conditions. I do quite a bit of business, beer business up there during hot months.

Q. Wasn't that the same hot month in 1953 as it was in 1954?

A. Hot month? I don't know. I don't remember wast the weather condition was.

Ray Wilkes, for Respondent-Cross

- Q. What has the weather got to do with the ten percent decrease figure that you show in August as opposed to the 48 in July and the 58 in September?
- A. People just drink more beer or drink less beer according to the weather conditions, I believe.
- Q. Isn't the weather the same, sir, generally for the month of August in 1953 as it for August of 1954?
 - A. I don't think always.
- Q. Is this based on a comparative year basis month to month?
 - A. For 1953 and 1954?
 - Q. Yes.
 - A. Yes.
- Q. Couldn't this 58 percent figure then in 1954 for September be due to weather disparity between September 1954 (451) and September 1953?
- A. I don't understand what you mean, don't understand what you are getting at.
- Q. I asked a simple question. It shows 48 percent decline for July.
 - A. That is right.
- Q. Of 1954, as opposed to July of 1953, it shows a ten percent decline for the month of August for 1954, as opposed to the month of August, for 1953, and I want to know how do you account for that—well, it would be a 27 or 38 percent come back of Griesedieck Brothers during the August month of 1954.
- A. Well, let me see here. Well this, this is the month that Griesedieck started to take that decline, really took it.
 - Q. What month is that, sir?
 - A. That month of August.

- Q. You mean it was not felt until August of 1954?
- A. That it was starting to fail in July and then in August is where it really did take a drop in 1954.
- Q. Your testimony is that it started to drop in July of 1954, is that correct, sir?
- A. No, it didn't start to drop. It really had dropped in 1954.
- Q. Your figures show a decrease of 48 percent in July of (452) 54?
 - A. Yes.
- Q. But a decrease of only ten percent in August of 1954. To what do you attribute that comeback of Griese dieck Brothers during the month of August in 1954.
- A. Well, just probably was one of them good Griese dieck months, maybe. I can't account for it.

Mr. Mayer: That is all we have, Mr. Examiner. Hearing Examiner Hier: You are excused.

(Witness excused.)

RICHARD E. CURREN was thereupon called as a witness for the Respondent and, having been first day sworn, testified as follows:

Hearing Examiner Hier: What is your name, sir! The Witness: Richard E. Curren.

Direct examination by Mr. Barton:

- Q. Did you give your residence, Mr. Curren?
- A. Elk's Club, Springfield, Illinois.
- Q. What is your business?
- A. I operate a tavern, Springfield, Illinois, 205 Was ington Street.

Q. What brands of beer do you handle in your tavern?

A. I have Schlitz, Budweiser, and Pabst. I did handle Millers and I dropped Millers; now I got Stag, Ealstaff, (453) "Griese", and Gold Top, Reich, that is a local beer.

Q. Have you prepared, or had prepared a tabulation of purchases in '53, '54 and '55, of each of those brands of heer!

A. I have, sir.

Mr. Barton: May I have them marked, please?

There is a separate tabulation for '53, '54 and '55, each, of which are made up of multiple pages. I would like to have each marked a separate exhibit.

Hearing Examiner Hier: All right, Mr. Smith. There is marked for identification Exhibit 79-A through 79-K, witnesses purchases of various brands of beer during 1953 and as Exhibit 80-A through 80-J, the same thing for '54, and as Exhibit 81-A through 81-H, the same thing for nine months of '55.

And as Exhibit No. 82, a recap of the previous three exhibits.

(The papers referred to were marked Respondent's Exhibits 79-A through 79-K, 80-A through 80-J, 81-A through 81-H, and 82 for identification.)

Mr. Barton: In part.

Hearing Examiner Hier: In part.

By Mr. Barton:

Q. Mr. Curren, I show you Exhibit 82 for identification and ask you whether that is a recap made by me of certain of (454)—the figures contained on Exhibit 79 through 81?

A. It is, sir.

Q: It is true and correct so far as you have been able to determine?

A. Yes, sir.

Mr. Barton: I of rer in evidence Exhibits 79 A K, 80, 81 and 82.

Mr. Mayer: I only have one question. Is all of the basic material here, Mr. Barton, from which this exhibit is drawn, number 82?

Mr. Barton: Yes, it is.

Mr. Mayer: No objection.

Hearing Examiner Hier: It is admitted.

(The papers referred to, heretofore marked for identification Respondent's Exhibits 79-A through 79-K, 80-A through 80-J, 81-A through 81-H, and 82 were received in evidence.)

Ba Mr. Barton:

Q. I note from Exhibit 82 that your business total package beer business increased 37 percent in 53 to 54 while your Griesedieck Brothers business decreased four and four-tenths percent and that the percent of decrease in G.B. in the last six months was 20 percent.

What explanation in the last six months of 54, what explanation, if any, do you have for the drop off in (455) Griesedieck Brothers sales by you in your tavern in the last six months of 1954?

A. Well, I base my reasons for the decline in Griese dieck first, primarily, is the baseball season. Our town is a baseball town. It always has been, and the Cardinals have always been their favorites. When Griesedieck had the broadcast, even though Budweiser was the sponsor they still drank Griesedieck. When Budweiser took over

the broadcasting of the Cardinals Budweiser began to take hold.

Secondly, the difference in beer. My customers is like a family trade or the guys I went, the fellows I went to school with and grew up with and their families. 97 per tent, 95 percent of my trade is regular. I have very few transient trade. When they walk in that door I know what he wants. When he walks in I grab for the Griesedieck bottle.

In the last six months or year, they stopped. I am no chemist. I don't know what is wrong with it. I sell what ever he wants. I am just the middle man. If he cares whatever he wants, if he is a good customer I will get it for him and I will sell it.

And third, I like the distributorship. That is another reason for decline of Griesedieck there. The fellow had briesedieck was a topper man in the town. You couldn't beat it. He had it sewed up like Hyde Park was previous. They broadcast. Griesedieck took over and they got it. briesedieck (456) lost the broadcast, and the attitude was that he did not need them. He would take care of the package store. That caused dissension. That aided in the decline of Griesedieck beer.

Q. What, if any, complaints did you receive from your eastomers about the Griesedieck beer in the middle part of 1954?

A. Naturally, you would hear different opinions. Every-body ain't got the same taste. I didn't pay too much attention. They just said, "It don't taste right." Just said, "Let me have another, give me Stag or Falstaff." They jumped from Stag to Falstaff.

- Q. You mean from Griesedieck Brothers to Falstaff!
- A. When you have a couple, like a couple that drink three or four cases a week, when they switch over you can notice it.
- Q. Were some of those three to four case drinkers the Griesedieck drinkers who switched?
 - A. Yes, sir.
 - Q. What price levels do you have in your store?
- A. I have—I sell premium beer such as Schlitz, Palst and Budweiser, 30 cents. Falstaff, Stag and "Griese" at 25 cents, and I sell Goldtop, which is the local beer, Reich at 20 cents.
 - Q. What is "Griese" 6-pack?
- A. 6-pack, \$1.10. For Flagstaff \$1.05. I sell Reich's (457) bottles for a dollar, two for a quarter.

Hearing Examiner Hier: Are you talking about three or four cases a week—are you talking on premise or off premise?

The Witness: On premise.

Hearing Examiner Hier: On premise?

The Witness: Yes.

Hearing Examiner Hier: That is 14 bottles of beet a day!

The Witness: This fellow is 6'4" and he is Irish. Sleep means nothing to him. When he gets 48 hours off he drinks constantly. When I open again he comes right back.

Hearing Examiner Hier: All right.

The Witness: I can give you his name and you can inquire.

Hearing Examiner Hier: No, I don't need that. This is not necessary.

By Mr. Barton:

- Q. You are familiar with the fact that G.B. put out a beer advertised as "Krausend", are you not?
 - A. Yes, they mailed circulars to us.
- Q. What is the fact as to whether or not this customer complaint, customer reaction came about at about the same time of that advertising campaign?
- A. Truthfully, I don't pay any attention to that advertising. (458) You have all different brands come up with something new. You hear that. I just go by the demand. All I know is at the time the latter, ever since I started Griesedieck was my top and since 1951 it has been declining every year. In the early part of '50 when I first opened I used to sell 150 cases a month.
 - Q. Of Griesedieck?
- A. Of Griesedieck, different packs. Now it has declined to about 40, 35 a month, in that period of time.
- Q. What, if anything, is Griesedieck Brothers doing in Springfield to keep sales up?
- A. Well, right now he is doing something—couldn't get him to do before—he is sponsoring bowling teams. There is a lot of them, 10, 12, 14 bowling teams. That is quite a lot for a city ear size. And that is starting to pick up Griesedieck sales because, naturally, if a fellow walks in with a Griesedieck shirt he will drink it whether regular customer or not.
- Q. Do you have any experience with Griesedieck beer being wild or foamy in that period?
- A. I did for a short time but I attributed it to the refrigeration. I thought maybe that I had it on ice too long. Cold beer will do that. I never paid any attention until it was over and I talked to fellow tayern owners and

they tell me they had the same trouble. I told the driver (459) but that was as far as it went.

Q. Was there any part of this Griesedieck loss in your tavern due to a change in price of any other beer that was being sold in competition with it?

Mr. Mayer: May I have that question read!

Hearing Examiner Hier: Read it back.

(Question read by reporter.)

Hearing Examiner Hier: You may answer.

The Witness: You mean by any other beer's prices dropping?

By Mr. Barton:

- Q. Yes, that is right.
- A. Would it have any effect on Griesedieck?
- Q. Did it—in fact, was there a change in any other beer's prices?
- A. My clientele does not matter. It does not matter to them.
- Q. Well, in fact has there been any change in your prices at which you buy the brands you buy since January 1, 1954?
 - A. No. sir.
 - Q. And no change in your selling price!
- A. No. I think Budweiser went up a penny, heally then dropped, on the bottle, so it balanced out—dropped on the bottle.
- Q. Who talked to you first about testifying level (460) A. Ernest Schaeffer, local Budweiser distributor in Springfield.
- Q. You were called on by Mr. Ingamells and Mr. Hall quist?

Richard L. Curren, for Respondent-Cross

- A. Did I?
- Q. Your expenses are being paid to come here by An heuser-Busch?
 - A. I hope so.
- Q. Do you have any relatives employed by Anheuser-Busch!
 - A. No. sir, I haven't.
 - Q. Are you indebted in any way to Anheuser-Busch!
 - A. No. sir.

Mr. Barton: Your witness.

Cross examination by Mr. Mayer:

- Q. What did you talk about when you talked to Mr. Hallquist and Mr. Ingamells?
- A. Well, they came up, I was over at—I live at the Elks Club and Mr. Schaeffer called me and wanted to know whether I wanted to talk. Mr. Ingamells explained to me if I would furnish the information on the different products of beers, they would give me different reports on beer, how much I sold, from my books—would I be willing if Budweiser paid the expense back and forth, would I be willing to verify that those books were proper.
- Q. Did you discuss the conclusions to be drawn from those (461) figures?
- A. The day I got here I still don't know the reason why. I don't know the exact reason yet what this is all about.
 - Q. Do you have television in your tavern?
 - A. No, sir. I had it, I had it for a few weeks and got out.
 - Q. Do you have radio in your tavern?
 - A. Yes, sir.
 - Q. Do they listen to ball games on it?
 - A. I pull the juke box and listen to the game.

Richard F Curren, for Respondent-Cross

- Q. Do they ever listen to the fights in your tavern?
- A. Not too much. They go down and watch television.
- Q. Do they listen to the heavy weight championship fights?
 - A. Yes, the major fights.
 - Q. Do they watch the ball game on television?
- A. Not too much. Lot of them go down. When I am open, I don't open until 3:00 or 3:30, whenever I get there
- Q. But the influence of the television—the ball game is already on when you open, isn't it?
 - A. Ball game is about over when I open.
- Q. But the advertising on the ball game is very lafluential?
 - A. Yes, sir, with the Cardinals, the product.
- Q. Now, I think you testified that the switch was from Griesedieck to Stag and Falstaff—why is that?
- A. Falstaff I attributed to Dizzy Dean and I go back again (462) to baseball. When Dizzy Dean took over that, they come in and watched "Ole Diz"—on account of the ball club, that game of the week.
 - Q. Watched him on television?
 - A. On television, yes, sir.
 - Q. Do you have a television in your tavern?
- A. No, sir, I watch it down to the Elks, when the game is over I open up. I watch it myself.
- Q. The customers come from the Elks down with you and open up the tavern with you?
 - A. My tavern is not legit.
- Q. What sport program does Stag put on television in your area?
- A. I think it is wrestling on television. I am not too much—I don't know too much about that.

Richard E. Curren, for Respondent-Cross

- Q. You testified that some of your customers switched from Griesedieck to Stag.
- A. The two fellows that I am referring to both switched to Stag.
 - Q. Did the television or the wrestling contribute to that?
- A. No, sir, it had nothing to do. I mean they went around and tried them all. They drank Bud and they drank Schlitz and then went back to Stag and then drank Stag. I mean, they tried each of them.
- Q. Has the Griesedieck sales in your establishment been (463) on the 'decline since 1951?
- A. Well, sir, I will say it has been going—it never got really on a definite decline until the last year. I mean, it has just fallen off.
- Q. How many outlets similar to your tavern type, on and off premises outlets are there in Springfield?
- A. There is 189 in the Cr y and 96 in the County, which is just a mile or two away within that area.
 - Q. In all about the same general area?
 - A. About 255 toverns in that area.
- Q. Would you say that generally all of the taverns handle Budweiser, Pabst, etc.?
- A. Seven beers I named, I would say, are in every tavern in Springfield.
 - Q. About how many are there, 260?
 - A. About 255, yes.
 - Q. How long have you handled Budweiser?
 - A. Since the day I opened, September 20, 1950.
 - Q. Do you handle Budweiser draft beer?
- A. I had draft for about a year. I took it out. I have one local draft beer.
 - Q. How do you buy your Budweiser?

Richard E. Curren, for Respondent-Cross

- A. They come by every week.
- Q. Through the local wholesaler?
- A. The wholesaler, yes.
- (464) Q. Is he located in Springfield?
- A. Yes, sir.
- Q. Has that been the same wholesaler since you can into business?
 - A. Yes.

Mr. Mayer: May we have a moment to examine some of the figures on the tabulation?

Hearing Examiner Hier: All right.

By Mr. Mayer:

- Q. Is Budweiser the leading seller in your tavera
- A. I think at the present time it is, sir.
- Q. How long has that been?
- Λ. I'd say in the last—about the last year or year and a half. It has been picking up steadily.
- Q. During this time when it became your leading seller, did you continue to sell it at a premium price with relation to Stag and Falstaff?
 - A. Yes, sir, 30 cents a bottle, I sell that.—

Mr. Mayer: That is all we have, Mr. Examiner.

Hearing Examiner Hier: I take it from what you say. Mr. Curren, that brand loyalty is a pretty unsteady thing when it comes to broadcast and television shows?

The Witness: Well, sir, I think that people try to show their appreciation by purchasing the product by the broadcasting of that company. I know when Hyde Park had (465) the ball game broadcasted over radio that Hyde Park was the most popular beer in Springfield. Hyde Park, they lost the broadcast to Griesedieck—they well

down and Griesedieck took over. It was the top beer in Springfield for years.

Now that Budweiser has taken over it is moving up in a steady increase not only in my place but through the different individuals that own tayerns that I have talked to.

Hearing Examiner Hier: That means that athletic or sporting broadcasts are more important than price, does it not!

The Witness: In my tavern alone, sir, I don't think the price has any effect. I get them specials on beers and whiskey—I don't even buy them because my customers won't buy them. The price has—is no object to them there.

Hearing Examiner Hier: Very well. Anything more? You are excused.

(Witness excused.)

We will come back at 1:30 o'clock.

(Whereupon, at 12:00 o'clock noon, a recess was taken antil 1:30 p.m., this day.)

(466) AFTERNOON SESSION

1:30 o'clock p.m.

Hearing Examiner Hier: Call your witness.

Mr. Baker: Mr. Morgan, please.

PAUL MORGAN was thereupon called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

Direct Examination:

Hearing Examiner Hier: What is your name, sir?

The Witness: Paul Morgan.

By Mr. Baker:

- Q. Mr. Morgan, what is your home address, please!
- A. 238 South 19th, Decatur, Illinois.
- Q. What type of business are you in?
- A. Tavern.
- Q. Do you sell for on-premises consumption or of premises?
 - A. Primarily on premises.
 - Q. What is the address of your business?
 - A. 619 North Water, Decatur.
 - Q. How long have you been in that place of business!
 - A. Six and one-half years.
 - Q. Do you wait on the trade yourself?
 - A. Yes, sir.
 - Q. What beers do you handle?
- A. Schlitz, Budweiser, Pabst, Miller's High Life, Helleman's (467) Old Style, Hamms, Stag, Falstaff and Griesedieck.
- Q. Have you prepared a tabulation showing your Griesedieck purchases for 1953, 1954 and 1955 as against your total purchases of beer?
 - A. Yes, sir.
- Q. You also have a tabulation which I gave to you yesterday summarizing this?
 - A. Yes, sir.
- Q. Have you checked that against your figures and satisfied yourself that it is correct?
 - A. Yes.

(The document referred to was marked as Respondent's Exhibit S3 for identification.)

Hearing Examiner Hier: Exhibit 83 is the witness' beer purchases for 1953 through 1955 by brands; is that right!

The Witness: Yes.

(The document referred to was marked as Respondent's Exhibit 84 for identification.)

Hearing Examiner Hier: Exhibit 84 is the summarization of the same.

Mr. Baker: I offer both of these documents, Exhibit 83 and Exhibit 84.

Mr. Mayer: No objection.

Hearing Examiner Hier: Admitted.

(The documents referred to, heretofore marked for (468) identification Respondent's Exhibits \$3 and 84 were received in evidence.)

By Mr. Baker:

Q. Mr. Morgan, without going into detail will you follow me on the figures and see if I summarize correctly your situation.

A. Yes, sir.

Mr. Mayer: Objection. I think it would be more proper to ask the witness to summarize the figures rather than to lead the witness with respect to the summary offered by Respondent's counsel here.

Mr. Baker: Very well.

Hearing Examiner Hier: It does not matter; they are on the paper there. Go ahead.

By Mr. Baker:

- Q. Mr. Morgan, do your figures show that you had an increase in total beer purchases in 1954 over 1953 of around 40 per cent?
 - A. Yes, sir; 40.6.
- Q. In that same period of time what were your sales with respect to Griesedieck?
 - A. Griesedieck purchases declined 7.2 per cent.
- Q. During what period of 1954 was your most pronounced decline in Griesedieck?
- A. Our most pronounced decline was starting September.
- Q. What was your decline percentage-wise for the last six months of 1954?
 - (469) A. The last six months was 34.2 per cent.
 - Q. To what do you attribute this decline?
- A. Several reasons before mentioned. When they used the word "Krausend" in their advertising, which no ere, the drinking public knew nothing about this word, but it rhymed with "poisoned", so they would come in and they would call for, "Give me some of that poisoned beer."
 - Q. Did that occur frequently in your tavern?
- A. Yes, it did, until I had to laugh over it, and they stopped it.

Another big item, we had at home there I attributed to the decline of Griesedieck sales is the fact they changed salesman. They had a very popular salesman, and they replaced him with two other fellows that we were not acquainted with, who had not been in—

Q. When did they change salesmen, do you remember

A. It is more than a year ago. I don't know, I couldn't tell exactly.

Hearing Examiner Hier: Where would the change of salesmen have any effect on the consumer demand, consumer preference?

The Witness: This man, Mr. Crouch, the salesman, was very popular, and he knew—any time he would go in a tayern, he would call five or six people by name, and they drank his beer because they liked him.

(470) Hearing Examiner Hier: They liked him rather than the beer?

The Witness: Well, that is always historic. If you sell yourself you can sell anything.

Hearing Examiner Hier: I suppose that could happen in a town the size of Decatur; I don't think it could happen here, but go ahead.

By Mr. Baker:

- Q. What price, Mr. Morgan, do you sell Falstaff, Griese-dieck, and Budweiser?
- A. I sell Griesedieck and Falstaff at 25 cents and Budweiser 30 cents.
 - Q. Do you handle Hamms?
 - A. Yes, sir.
 - Q. What do you sell that for over the bar?
 - A. Thirty cents.
 - Q. How about, do you sell 6-packs to take out?
- A. That is a small item with me, this carry-out business. I do sell some.
 - Q. At what prices?
 - A. \$1.15 for popular beer, \$1.40 for premium.
 - Q. How about Hamms?

A. \$1.40.

- Q. The prices you just gave to me, are those the prices in effect throughout 1954?
- (471) A. We had a 12-cent raise in premium beer. It has been—I don't know, quite some time back—I don't know.
 - Q. Before 1954?
 - A. I believe it was.
- Q. Aside from the play on words that you mentioned with respect to Krausend, did you have any complaints quality-wise?
- A. Yes. I had one 50-case order of beer that seemed wild, that is, you open it, it run over. Personally, I didn't have any complaints about the quality of the beer, the taste of it. The fact it was wild, people would say, "What's the matter, you had this too long?"

I thought possibly we had not rotated our beer, and we had some bad beer, that it set too long.

Q. All right, continue.

A. But at a meeting one day of the tavern owners I asked some friends of mine, close friends, if they had happened to have any trouble with Griesedieck being wild, and several of them said, "Yes," they had.

Before that I had asked my customers, you know. "Sorry," and I would reach and get them another one, and asked them if they had had that happen before any place they drank, and they said, "Yes," they had had I happen different places.

So in conversation with the rest of the tayern owners I find out most of them had that trouble. I assumed then it was possibly a bad batch of beer.

- (472) Q. Since that one occasion you have not had any trouble or complaints?
 - A. Only that one time was all I have had.
- Q. Who first talked to you about the possibility of testifying in this case?
 - A. Tom Crawford.
 - Q. Is he the Budweiser distributor?
 - A. His father is, yes, sir.
- Q. And you talked to Mr. Ingamells and Mr. Hallquist, did you?
 - A. Yes, sir.
- Q. And Anheuser-Busch is paying your expenses to Washington?
 - A. Yes, sir.
- Q. Are you indebted financially or any other way to Anheuser-Busch?
 - A. No. sir.
 - Q. You are testifying here under subpoena?
 - A. Yes, sir.
 - Mr. Baker: You may cross examine,

Hearing Examiner Hier: Before you do that, tell me, Mr. Morgan, let us put it this way, how many requests do you have to have from customers before you will stock another brand of beer? I mean, beer is bulky, takes up a lot of cold storage space, and so on, and I am just wondering what the resistance level is there.

(473) The Witness: Quite often, sir, you will bring in a new brand of beer, and they will come around to us and tell us that they are going to run a bunch of advertising that, and this and that. Sometimes there is free merchandise to get it started. I never accept a new product

until I have enough calls for it that I think it justifies handling it.

(474) Hearing Examiner Hier: That is what I am wondering, how many are enough calls for it.

The Witness: If I don't have ten or twelve calls a day for it, I don't—

Hearing Examiner Hier: You are open from morning until midnight?

The Witness: Nine o'clock until one in the morning: yes, sir.

Hearing Examiner Hier: One other thing: What happens when somebody comes in there and wants a brand of beer that you do not carry? Do they walk out or do they buy something else?

The Witness: The only time it ever happened, sir, is on a new product. "I am sorry I don't have it. Would you care for anything else?" And they usually take something else, and I tell them, if there is enough demand for it, that I will start carrying it.

Hearing Examiner Hier: You may cross examine.

' Mr. Baker: Excuse me, before you cross examine. I want to put in a picture of this place, one exhibit.

(The photograph referred to was marked Respondent's Exhibit S5 for identification.)

Mr. Baker: Would you please tell me what that is, Mr. Morgan?

The Witness: That is the inside of my tavern.

(475) Mr. Baker: I offer it.

Mr. Mayer: No objection.

Hearing Examiner Hier: Admitted.

Paul Morgan, for Respondent-Cross

(The photograph referred to, heretofore marked for identification Respondent's Exhibit 85, was received in evidence.)

Cross Examination by Mr. Mayer:

- Q. Mr. Morgan, approximately how many taverns in the classification of yours are there in Decatur, Illinois?
- A. There are 97 licenses. We all have one license in our town; clubs, package stores, everything is the same license. I think there are five package stores and nine clubs; the rest of them are such type places as mine.
 - Q. How long have you handled Budweiser?
 - A. Since I went in business six and a half years ago.
 - Q. What beer do you have on draft?
 - A. I have Budweiser.
 - Q. How long have you had Budweiser draft beer?
- A. When I bought the tavern six and a half years ago she had Budweiser and Blatz, and Blatz discontinued service in town, so I put exclusive Budweiser on.
- Q. Now, in relation to the location of your tavern, is it a down town tavern as opposed to a local or residential area tavern or what type of tavern is it?
- (476) Λ. I am just at the edge of the business district, in the residential, apartment district, and it is more or less a neighborhood tayern, but I do get foot traffic from up town.
- Q. Then you would have what, little or considerable amount of transient trade
 - A. Oh, possibly a third.
- Q. Now, sir, when did the fact that Griesedieck was using the Krausend process first come to your attention?

Paul Morgan, for Respondent-Cross

A. Well, truthfully my customers told me about it before I knew about it, before I knew I was selling Kransend beer. I don't pay any attention to advertising, but one of my customers asked me, "What's this Krausend beer!" And I was—I didn't know what to tell him, I did not know what it was; and then I found out about it, I mean, through advertising and whatnot. I checked into it to see what it was. I didn't find out what it was, but I knew they were selling Krausend beer.

Q. When was that, sir?

A. To the best of my knowledge it was, to my remembrance it was, about a year ago, a little more than a year ago.

Q. In the late months of 1954?

A. To the best of my remembrance, yes.

Q. Did Griesedieck Brothers salesmen ever come to your tavern to acquaint you with what the Krausend process was?

A. No. I was never informed of what it was.

Q. Did he ever attempt to make use of any point-of-sale (477) advertising with regard to the Krausend process in your tayern?

A. Yes, he brought ads and whatnot, inside paper ads.

Q. When was that, sir?

A. Well, approximately this time, in the latter part of 1954. I would say August, September, along there. That date isn't definite, but as near as I remember.

Q. Might it have been earlier, in January or February of 1954?

A. Well, it possibly could be. I mean the records would show when they come out with it, but I don't remember.

Paul Morgan, for Respondent-Cross

- Q. Do you remember definitely the first complaints you had about the date on which you received the first complaint with regard to the product?
 - A. The date as to it?
 - Q. Yes.
 - A. No, sir; I don't remember.
- Q. Could you approximate this within the radius of one month?
 - A. It would be a guess if I told you the day.
- Q. In answer to one of Mr. Baker's questions you referred to popular and premium price beers. Would you tell us in your tavern what are your popular priced beers and what are your premium priced beers?
- A. I have three popular priced beers, Griesedieck, Stag and (478) Falstaff, and my premium beers Budweiser, Schlitz, Miller's Highlife, Old Style Lager, Hamms, and Pabst.
- Q. Now, in those three popular priced beers in your tavern, do they advertise by point-of-sale advertising or on their label that they are premium beers?
 - A. Falstaff advertises premium quality beer.
- Q. But in your terminology you call it a popular priced beer?
- A. When we refer to popular and premium beers, we refer to the cheaper or more expensive beer.

Mr. Mayer: In price. That is all we have, Mr. Examiner.

Mr. Baker: That is all.
(Witness excused.)

Mr. Baker: Mr. Diemler.

Paul F. Diemler, for Respondent-Direct

PAUL F. DIEMLER was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination:

Hearing Examiner Hier: What is your name? The Witness: Paul F. Diemler.

By Mr. Baker:

Q. Mr. Diemler, would you state for the record your home address, please?

A. 1910 Tennerbridge Road, Jefferson City, Missouri

(479) Q. What type of business are you engaged in

A. All we have, we consider it a general merchandisstore; in other words, we sell, we put in anything that we think we can sell.

Q. What is the address of your store?

A. 504 Madison Street, Jefferson City, Missouri.

Q. What is your position with your organization?

A. Manager.

Q. How long have you been the manager?

A. Since 1951.

Q. What did you do prior to that?

A. Air Force, United States Air Force.

Hearing Examiner Hier: Mr. Reporter Respondent's Exhibit 86 is a photograph of the exterior of the witness store.

(The photograph referred to was marked Respondent's Exhibit 86 for identification.)

Hearing Examiner Hier: Respondent's Exhibit 57 is a photograph of the interior of the witness' store.

Paul F. Diemler, for Respondent-Direct

(The photograph referred to was marked Respondent's Exhibit 87 for identification.)

Mr. Baker: I offer it.

Mr. Mayer: No objection.

Hearing Examiner Hier: Admitted.

(The papers referred to heretofore marked Respondent's (480) Exhibits 86 and 87 for identification, were received in evidence.)

Ba Mr. Baker:

- Q. Mr. Diemler, have you compiled figures showing in dollars the prices you paid the whofesalers for your total beer in your place of business for the years 1953, 1954, 1955].
 - A. Between November 1st of 1955; yes, sir.
- Q. And what you pay to the Griesedieck wholesaler for the same period of time for Griesedieck beer?
 - A. Yes, sir.
 - Q. And the same with respect to Falstaff?
 - A. Yes, sir.

Hearing Examiner Hier: This three-sheet tabulation of those prices as counsel stated them, Mr. Reporter, have been marked Exhibit 88-A, -B, and -C.

(The papers referred to were marked Respondent's Exhibits 88-A, -B, and -C, for identification.)

Mr. Baker: I offer 88-A, -B, and -C.

Mr. Mayer: We have no objection.

Hearing Examiner Hier: Admitted.

Paul F. Diender, tor Respondent Doort

(The papers referred to, heretofore marked is identification Respondent's Exhibits > A. -B. as C. were received in evidence.)

Im Mr. Baker:

- Q. Mr. Diemler-
- (4-1) A. Yes, sir.
- Q. (Continuing)—do you recall my giving you a recapitulation of the data shown on Respondent's S-A, B, and C yesterday afternoon, and asking you to check that data against your original?
 - A. Yes, sir.
 - Q. And you are satisfied that that is correct!
 - A. Yes, sir; I am.

Mr. Baker: I ask that it be marked.

(The document referred to was marked Respotal ent's Exhibit 89 for identification.)

Mr Baker: 1 offer 89.

Mr. Mayer: No objection.

Hearing Examiner Hier: No objection, admitted.

(The document referred to, heretatore mark for identification Respondent's Exhibit 89, was received in evidence.)

By Mr. Baker:

- Q. Mr. Diemler, what do your figures show with a spect to your trend of GB purchases 1954 and 1970.
 - 1. They are down.
 - Q. In both years!
 - A. Yes, sir.

Paul F. Diemler, for Respondent-Direct

Q. What do you attribute that decline to?

A. Oh, I think there are two, maybe three reasons for that.

(482) Q. Would you state them, please?

A. Yes, sir. Number one, in my honest opinion, I think the quality of the beer is slipping. I don't think they have the quality of the beer that they used to.

Hearing Examiner Hier: Is that your opinion?

The Witness: Yes, sir; it is my opinion.

Hearing Examiner Hier: You have drunk it?

The Witness: Yes, sir.

Hearing Examiner Hier: Go on, the second reason? The Witness: Oh, I think when they put out their advertising, when they tried to do something, I don't know why they tried it, they were selling good beer there, it was selling good, then they tried to advertise something, they just hit on something bad when they put out that Krausend.

Ba Mr. Baker:

- Q. Let me understand it, it was a poor selection of advertising?
 - A. That is right; yes.
 - Q. Why do you say that?
 - A. I think it hurt them.

Hearing Examiner Hier: You mean the name "Krau-soul?"

The Witness: Yes, sir: I do.

Hearing Examiner Hier: Or is it the way the "Krausend" hear was presented which led to the decline, in your philon?

1483) The Witness: I think a lot is the word "Krausend", around our town at home, it has a lot to say about

Paul F. Diemler, tor Respondent Direct

it. I will tell you two reasons for that; I had another beet put out by the Muchlebach Brewing Company of Kansas City, and they called their premium beer Krausend beet, and it wasn't too good a beer; I don't know anybody—that had some reflection.

The other one, we had a little brewery at home that was bought out by some fellows in the Moerschel Brewery, and they used to make Capital beer, and they sold out that brewery and somebody came in and started making that beer, called Krausend Brau, and that will always be remembered at home.

By Mr. Baker:

Q. Do you remember when that was? Was that some time prior to 1954?

A. Oh, yes; the Krausend Brau, when they put that out-

Q. Yes, sir.

A. (continue)—I think that was about in 1947, 1946 at 1947. They just—they didn't last too long at all.

Hearing Examiner Hier: Is that area in which yes operate primarily of German extraction, or Irish?

The Witness: Yes, sir; very much, German and Dutch High German and Low German.

Ba Mr. Baker:

Q. What do you sell six packs of various brands for

(484) A. We have a varying price. We have a collinear price, and a firm beer price.

Q. Give me the warm beer price. By the way, before you do that, do you sell only for off-premises consumption

A Y's, sir.

Paul F. Diemler, for Respondent Direct

- Q. All right. Give me the prices on warm beer.
- A. Cans? Canned beer?
- Q. Canned, yes, six-pack.
- A. Six-pack of Stag, Griesedieck, and Falstaff sells 6 for 98 cents; Sterling beer is 6 for 88; Budweiser, Schlitz, Hamms, Miller's, Pabst Blue Ribbon, Carling's Ale, those sell 6 for \$1.03.
 - Q. Did you mention Hamms in that group?
 - A. Yes, sir: 1 did.
 - Q. How about the cold beer?
- A. We charge a nickel more on a six-pack for cold beer.
- Q. The price of cold Falstaff, if I understand it, is the same as warm Budweiser.
 - A. Right; yes, sir.
- Q. Have you found the four-cent differential between Budweiser, Schlitz and Miller's, on the one hand, and Stag, Falstaff, and Griesedieck, on the other hand, a significant differential with respect to the decision of your clientele as to which they are going to take?
- A. No, sir; not too much. I think if a man likes Budwiser, (485) he is going to drink Budweiser, he is go, ing to pay for it. I know I am that way; I know if I likeme kind of beer, I know that is what I like,
- Q. Who first talked with you about the possibility of lestifying in this case?
- A. Mr. Norbert Scheppers, our local Budweiser distributor.
- Q. Did you subsequently talk to Mr. Ingamells and Mr. Halquist?
 - A. Tro, sir.

Paul F. Diemler, for Respondent-Direct

- Q. And Anheuser-Busch is paying your expenses Washington?
 - . A. Yes, sir.
 - Q. You are testifying under subpoena?
 - A. Yes, sir; I am.
- Q. Are you obligated financially or otherwise in , y way to Anheuser-Busch?
 - · A. No, sir.
- Q. Are you related to any employees of Anheuser-Busch?
 - A. No, sir.
 - Mr. Baker: You may cross examine.
 - Excuse me, Mr. Mayer, may I ask one question?
 - Mr. Mayer: Yes.

By Mr. Baker:

- Q. Was there any change in the prices at which you sold beer during the year 1954?
 - A. Retail prices?
 - (486) Q. Yes.
 - A. Yes, sir.
 - Q. What were the changes?
- Å. Oh, in 1954, I wasn't making much money down there, selling Griesedieck and Falstaff and Stag six for 94 cents, and these prices I am quoting you are all plus 2 cents sales tax, six for 94 cents, and on Budweiser, Schlitz and Miller's and Pabst Blue Ribbon and Carling's Ale, I had six for \$1,08—no, 98, I am sorry.
- Q. Was there any change in your purchase prices subsequent to January 1, 1954?
 - A Before January 1st?
 - Q. No. after January 1, 1954.
 - A. Yes, sir; only in Falstaff beer.

Paul F. Diemler, for Respondent-Cross

. Q. What was that change?

A. They raised it, I think they raised it ten cents, or maybe twelve cents a case, and then they just held it that way for about a week or ten days, maybe two weeks, and came back down, and it is still now two cents a case higher than other beers of that category.

Mr. Baker: That is all.

Cross examination by Mr. Mayer:

Q. How many package stores, Mr. Diemler, similar to the one which you manage, are operated in Jefferson City?

(487) A. Not very many, I would—let's see, there are about 6 others that are in business,

Q. Now, in Jefferson City, do they also issue you an off and on-premises licenses—do they issue off and on-premises licenses to the tayerns?

A. Well, yes, sir.

Q. In other words, the local taverns then can sell package goods just as well as you sell package goods?

A. Yes, they are competition right.

Q. Are there many taverns in Jefferson City, Missouri!

A. I think the last they heard, they thought there were 56 outlets, what they considered in Jefferson City, they thought there were about 56. Those are considered outlets. By that I mean package stores, and your bars:

Q. That would include every place you could buy package liquor in Jefferson City?

A. That is right.

Q. How long have you handled Budweiser?

A. It was there before I was there.

Q. You always purchased it through the same distribntor?

Paul F. Diemler, for Respondent-Cross

A. No, sir; we had a change in orstributors. I think it was in 1954 when Norbert Scheppers bought the distributing agency from Clyde Love, who is now down in the southern part of the State with a Budweiser distributorship.

Q. Were you acquainted with Mr. Love!

(488) A. Yes, sir.

Q. Did he personally call at your store?

A. Yes, sir; he did.

Q. Mr. Diemler, I want you to rank for me, if you would, for 1954, the various beers that you sold in order of their volume for 1954, their dollar volume, if you would, sir.

A. Well, I can't guarantee that it would really be accurate; I can give you a close guess to it.

Q. A close approximation would be all right, sir.

A. O.K. I think during 1954, I imagine Griesedieck was probably about the biggest -eller. They probably listed Griesedieck, Stag, Budweiser, Falstaff—Falstaff started picking up around through there, around 1954, Falstaff took its jump.

As I say, about a year before that it didn't do too good. Then I have some unadvertised brands of beer there. Muchlebach, Export, Sternbrau, Country Glub, Miller's. Hamms—I don't handle that in bottled beer, I only have that in canned beer; House of Liquors, and I guess down at the bottom of the list would be the ales, just as Carling's Ale.

Q. Just giving me the top six or seven, now, would you give me the leading brands as far as sales were concerned now in 1955?

A. 1955, Griesedieck, Stag, Falstaff, Budweiser, Schlitz, and probably Muchlebach.

Paul F. Diemler, for Respondent-Cross

(489) Hearing Examiner Hier: In that order!

The Witness: It wouldn't miss it far, that order.

Hearing Examiner Hier: What is your typical package off-premises sale?

The Witness: Six cans.

By Mr. Mayer:

Q. Mr. Diemler, when did you first hear of the Krausend process of manufacturing beer!

A. Where I first heard of it? Oh, I think I have heard of it a long time ago, before Griesedieck Brothers put it out.

- Q. Would you tell me what beers, to your knowledge, are manufactured according to that process!
 - A. No, sir; I wouldn't know.
- Q. When did you first hear of it in relation to Griese-dieck Brothers?
- A. I believe it was about in the spring of 1954 when they came out with it. I cooperated with the brewery, I let them put up a display in the store,
- Q. Did they take your picture of a display of theirs in your store?
- A. They took a picture of the display. I didn't know it. I wasn't there.
- Q. I was merely trying to ascertain the time, sir, whether it was in February, March, April, May.
- A. Well, it seems to me it was about in March or April, (490) because I know we were having some nice days, and the evenings were getting too cold, and I know Griese-dieck came over—the Griesedieck people wanted to know how they were getting along. I had to give them some

Paul F. Diemler, for Respondent Crass

excuse. I told them it was just too cool in the nightime and people weren't drinking the beer that should be drisk ing it.

- (491) Q. Now, did Griesedieck Brothers abandon to Krausend process or their advertising with relation to the Krausend process!
- A. Yes, sir; I believe they did. I haven't seen it around our store, I haven't.
 - Q. Have you asked the Griesedieck salesman about it
 - A. No, sir.
 - Q. Griesedieck is your leading seller, is it not?
- A. I don't know if it still is or not. I rather believe Falstaff is passing it up.
 - Q. It was in 1954?
 - A. I believe it was,
 - Q. It was in 1953?
 - A. Yes, sir.
- Q. Weren't you alarmed about the drop in sales of Griesedieck around 1955?
- A. Well, I knew it wasn't any fault of ours; our busness is still doing good.
- Q. Oh, sir; but didn't you question the salesman at length as to what was wrong, why Griesedieck was not moving the way it should move?
 - A. No, I didn't talk to the salesman distributor about it too much, no. He told me he wanted to know what was going on all the time, and how come we weren't selling it like we were.
 - Q. Did you have any opinions of your own that you expressed to the salesman as to why it was not being seld at that time in (492) 1954, late 1954 or early 1955, wherever it dropped off?

Ralph Filishy, for Respondent-Direct

A. I don't think I discussed it with the salesman too much.

Mr. Mayer: That is all we have, Mr. Examiner.

Mr. Baker: You may step down.

Hearing Examiner Hier: Excused.

(Witness excused.)

Mr. Baker: Mr. Filisky.

RALPH FILISKY was thereupon called as a witness on behalf of the Respondent and, having been first duly swern, testified as follows:

Direct Examination:

Hearing Examiner Hier: Will you state your name? The Witness: Filisky.

Hearing Examiner Hier: How do you spell your name, sir?

The Witness: Ralph F-i-l-i-s-k-y.

By Mr. Baker:

- Q. Will you state your home address, Mr. Filisky?
- A. 680 South Hayworth, Decatur, Illinois.
- Q. What type of business are you in?
- A. I am in a combination tayern and package store.
- Q. You sell for off-premises consumption and onpremises consumption?
 - A. Yes, I do.
- Q. How is your business divided between the two, roughly?

· Ralph Filisku, tor Respondent Direct

(493) A. Well, there were two buildings, the sabuildings there, and I tore the wallsom between the to buildings and put a row of shelving in the one hold, and bung a drape then to separate the two places.

Hearing Examiner Hier: That is not the answer to be question. He did not mean how was it physically distributed in volume, what precentage of your baness is package store and what percentage is

The Witness: I would say about 70 per cent, approximately 70 per cent is package.

Hearing Examiner Hier: Is package,

Bu Mr. Baker:

Q. That is for off-premises consumption?

A. That is right.

Hearing Examiner Hier: Mr. Reporter, Exhibit 90 is a photograph of the interior of Mr. Filisky's bar; and Exhibit 91 is a photograph of the interior of his package store.

(The documents referred to were marked as Respondent's Exhibits 90 and 91 respectively for identification.)

Mr. Baker: I offer these.

Mr. Mayer: No objection.

Hearing Examiner Hier: No objection, they will be admitted into the record.

(The documents referred to, heretofore marked for identification Respondent's Exhibits 90 and 91 were (494) received in evidence.)

Ralph Pilisha, for Respondent Direct

Ha Mr. Hal 1;

- Q. How rong have you been in business in Decatur!
 - A. Ten years the 10th day of December this year,
- Q. You have been in the same establishment except for the enlargement of it for the whole ten years?
- A. Well, it has been just as large as it is now. It has been changed around within those ten years.
 - Q. What brand of beer do you handle?
- A. Falstaff, Stag, and Griesedieck in the popular brands; Schlitz, Budweiser, Hamms, Miller's, Pabst Blue Ribbon, Old Style Lager, Ballantine's Ale and Carling's Ale.
- Q. Have you compiled some figures as to your purchases of your leading sellers for the years 1953, 1954 and 1955?
 - A. Yes, I have,

Mr. Baker: May I see them, please?

Hearing Examiner Hier: That will be 92.

(The document referred to was marked as Respondent's Exhibit 92 for identification.)

The Witness: I forgot to mention Canadian Ace, and Meister Bran.

By Mr. Baker:

- Q. Of these listed on Respondent's Exhibit 92 for identification, what percentage of your total beer business would you say these represent, these brands, that is, Schlitz, Budweiser, (495) Miller's, Old Style, Falstaff, Griesedieck, Stag, Canadian Ace, and Meister Brau?
 - A. Well now, that would be hard to say.
 - Q. Is it a predominant amount of your business?

Ralph Filishy, for Respondent Inco.

A. You mean --

Q. Of your total beer business!

A. Of my total beer business, yes; yes, it is

Q. You could not give an estimate as to how more

A. I don't know. Probably 90, 95 per cent.

Mr. Baker: I offer this exhibit.

Mr. Mayer: We have no objection.

Hearing Examiner Hier: Admitted.

(The document referred to, heretefore market for identification Respondent's Exhibit 92 was received in evidence.)

By Mr. Baker:

Q. Mr. Falisky, during the year 1954 did you at any time have any difficulty with Griesedieck Beer?

A. Yes, I did. It was the first two weeks in August, my wife and I and the children went down to Texas for a couple of weeks, and when I got back, my bartender had made a list along the side of the cash register in a panephlet, and he had poured out a little over 13 cases of Griesedieck bottle beer. He had opened it up for the customer, the customer said there was something wrong with it, they could not drink it, and he had (496) dumped it out.

So I got hold of the salesman or it, and he told me at that time they had changed their caps or something, and they were buying caps from a different outfit, and he couldn't understand though that I had that many had bottles of beer.

So I kind of let it go for a while and then, of coarse, as I was back around the place again, there were more

Halph Filisky, for Respondent Direct

people who complained about it, and that is when they started, enstoners started, bringing up the idea about the Krausend Beer and they said. The damned stuff is "Krausend, it is poisoned."

Q. When you came back from Texas did you do my ming to check up on your bartender to try to ascerning whether he had actually poured this beer out?

A. Well, I talked to an Irishman who lives down the street from me, oh, I would say, he would drink almost a use of Griesedieck bottled beer a day. I asked him about it, and he said they had opened six bottles straight for him and dumped each one of them out.

Q. Was that in your place of business!

A. In my place of business; yes, sir.

Q. Is the Irishman that you referred to still drinking Griesedieck!

A. No, he drinks Falstaff now.

Q. Does he drink it in your place?

A. Yes.

(497) Q. He is one of your regular customers?

A. Yes, he is.

Q. You knew for a fact he had been drinking Griese lieck prior to the time you went to Texas?

A. Ever since I had been in the place, outside of once is a while he would take a short draft beer.

Q. What are your prices over the bar for Budweiser and Falstaff, Griesedieck, et cetera?

A. Well, Budweiser and Pabst. Schlitz and Miller's. 30 cents; Falstaff, Stag and Griesedieck are 25.

Q. Do you have any others-

A. Then I have Canadian Acc at 20 cents, but I won't sell a whole case a week.

Q. How about 6-packs?

Ralph Filisky, for Respondent-Direct

- A. Six-packs, Budweiser, Schlitz and your premium beers are \$1.35 for six, and the popular beers, Falstall, Stag and Griesedieck are \$1.10 for six.
 - Q. Do you handle Hamms?
 - A. Yes, I do.
 - Q. What do jou sell that for over the bar!
 - A. Thirty cents.
 - Q. How about the 6-pack?
 - A. Same price as Bud and Schlitz, \$1.35.
 - Q. Do you handle Blatz?
- A. No. I dfin't. I did handle Blatz there at one time (498) Q. How long ago was it when you were handless. Blatz?
- A. I haven't had Blatz in my place for better than year, I guess.
- Q. When you did have it in, what were you selling? for?
 - A. \$1.35 for a 6-pack.
 - Q. Over the bar?
 - A. Thirty cents a bottle.
- Q. Is Blatz being handled in Decatur now by other retailers!
- A. As far as I know there is one retail outlet that handles Blatz.
 - Q. Is that a bar!
- A. There may be someone else I don't know of, but I do know this one place.
 - Q. Is that an on or off-premises?
 - A. Off premises.
 - Q. What do they sell it for, if you know?
- Mt. Mayer: Objection. I fail to see the relevant of this examination about the sale of Blatz by someonelse, not even by this particular witness.

Ralph Filisky, for Respondent-Direct

Hearing Examiner Hier: He is trying to establish premium.

Mr. Baker: Your Honor-

Hearing Examiner Hier: Are you trying to establish premium or lack of premium price?

Mr. Baker: Yes.

(499) Hearing Examiner Hier: Overruled, if you know. The Witness: Yes, I do.

Hearing Examiner Hier: You know that from being around the town for what they sell it? If you do, you may answer.

The Witness: A dollar for a 6-pack.

By Mr. Baker:

- Q. Today?
- A. Yes.
- Q. Who first contacted you with respect to testifying in this proceeding?
 - A. Ben Davis.
 - Q. Who is he?
 - A. He is the field man for Budweiser.
- Q. And subsequently did you talk to Mr. Hallquist and Mr. Ingamells?
 - A. Yes, I did.
 - Q. You are testifying under subpoena?
 - A. Yes, sir.
- Q. And your transportation is being paid to Washington!
 - A. Yes.
- Q. Are you related to any employees at Anheuser-Basch?
 - A. No. I am not.

- Q. Are you indebted to Anheuser-Busch financially of otherwise?
- (500) Q. How did you classify Falstaff as to price, price-wise, over the bar!
 - A. Over the bar, 25 cents a bottle.
 - Q. And the take-out, 6-pack?
 - A. Six-pack, \$1.10.
- Q. Have the prices, the retail prices, in your establishment changed since late 1953?
- A. I believe that, if I am right, it was in 1954 that we had a 12-cent increase in Budweiser, Schlitz and Palst and Miller's, 12 cents on a case.
 - Q. Aside from that there has been no change!
 - A. No, there hasn't.
 - Q. That is the purchase price you are talking about
 - A. That is my purchase price.
 - Mr. Baker: All right; that is all.

Cross examination by Mr. Mayer:

- Q. Mr. Filisky, in your ten years' experience did you ever recall your purchase price of Budweiser, Falsaf. Griesedieck and Stag being the same?
 - A. Falstaff, Stag and Griesedieck being the same?
 - Q. And Budweiser.
 - A. No, sir: I never have.
- Q. Do you ever recall your over-the-counter price but, the same for Falstaff, Griesedieck, Stag and Budwesst
 - (501) A. No, sir; I never have,
- Q. In those ten years, has it always been will be Budweiser has been the higher priced beer to you of a four beers?
 - A. Yes, sir.

- Q. Is it also the fact and has it also been true that it has also been sold by you at a higher price, sold over-the-bar?
 - A. Yes, sir.
- Q. And also in the 6-pack carton as you have sold it for off-sale?
 - A. Yes, sir.
 - Q. Now, sir, how long have you handled Budweiser?
 - A. Ever since I have been there,
- Q. And in the city of Decatur how many outlets similar to yours are there, sir?
- A. There are, let's see, there are four, I believe, maybe five. Another fellow is supposed to have one up—he may have it opened by now.
- Q. Now, in the entire Decatur area, how many places are there that someone could buy either off-premises or on-premises liquor?
 - A. Well, practically every place in Decatur.
- Q. Would you say that would be 50 outlets, a hundred outlets?
- A. Well, almost everywhere; I mean, primarily their business is not package liquor, but they do handle a few 6 packs of practically every brand, and if you want them they have got them for you, but their business is not carry-out business.
- (502) Q. There are only approximately four or five smaller to yours, a combination outlet?
 - A. That is right.
 - Q. You handled draft beer, sir?
 - A. Yes, sir.
 - Q. What kind, sir?
 - A. Michelob.

Q. How long have you handled that, sir!

A. Well, I got Michelob after the war when they started making it again.

Q. Then you handled it ever since the last war!

A. Before the war I was in the beer business in a hote. I had Michelob on tap over there, and as soon as I go out of the Navy and I bought the place where I am at new. I tried to get Michelob, but I understood from the distributor it was not available; that as soon as it was, as soon as it would be, I would get it.

Q. Now, sir, from 1954, would you rank for me in the order of volume-wise, in order volume-wise, the beer that you sold?

Hearing Examiner Hier: Including or excluding Michelob?

Mr. Mayer: In the package beer. The Witness: By the package?

By Mr. Mayer:

Q. Yes, sir ! both on or off-premises.

(503) A. Well, sir, I don't have that separated. I have my total beers here of the different brands.

Now I had an increase in Griesedieck Beer in 1954. That was over the period of the whole year, but I so more—I sold an awful lot of Griesedieck by the can in I had a tremendous increase in my over-all business.

Q. As I understand it then, the complaint about the Griesedieck Beer did not go to the canned been only the bottled beer!

A. Not to the canned best. In fact, I don't seem and may be even a couple of complaints about cans. It was a buttles.

- Q. Did the Griesedieck salesmen acquaint you with their advertising campaign with regard to the Krausend process?
- A. Well, yes, but I don't remember much about what he told me about it.
- Q. Do you remember letting him know it affected your bottle sales?
 - A. Yes, sir; he did. I was complaining to him about it.
 - Q. What did he say, sir, when you complained about it?
- A. Well, he said he didn't think it was the beer, he thought it was the beer caps. They had changed and started buying beer caps from another outfit.
- Q. Did your Griesedieck sales retain or return any in your bottled goods after the caps were changed?
- (504) A. No, sir. I used to—I said—we call them bins in your bottle boxes, and for quite some time I had to keep two bins of Griesedieck behind, and then I just sold four or five cases of Griesedieck, the night man did, in the walk-in cooler, and on Friday, Saturday, Monday nights, which were our three busy nights, well, we always had run those two bins out, and then one of the night keys would have to get some of the beer from the walk-in moder to finish out the evening.

Then after, I will say, within about, oh, five, six weeks, the beer started getting old in the box, and so Falstaff we were going to start running out of Falstaff muest of the customers switched over to Falstaff, so I gave Falstaff two bits, and "Griese" one, and that is more than plenty for my bottled beer.

Q In 1953 what were the percentage of your sales lettled as opposed to cans in Gricsedheck?

- A. Well, I would say we sold more bottles than we sold cans in 1953.
 - Q. In 1954 what was the percentage?
 - A. It was probably about 50-50.
 - Q. And in 1955 what was the percentage?
- A. It was about 70-30, 70 per cent can and 30 per cent bottle.
- Q. Now, is there a difference between the Griesedieck Brothers Beer in the bottle and the Griesedieck Brothers Beer in the can?
- A. That I couldn't say, sir. I never drink Griesedieck myself.
 - (505) Q. Did you ask the salesman about it, sir!
- A. There was supposed to be a difference in the two beers, I understand.
- Q. A difference in the Griesedieck Beer in the bottle and Griesedieck Beer in the can?
 - A. Yes; I understand that there is.
 - Q. Where do you understand that, sir?
- A. Well, I was down to the brewery, it has been quite a while ago, and they were talking about pasteurizing the bottle, and not pasteurizing the cans.
 - Q. What brewery was that, sir?
 - A. That was up to Blatz.
 - Q. What year was that?
- A. Oh, I don't know. It was probably about four four and a half years ago. At that time Blatz had que an advertising campaign around home.
- Q. Now, is that the basis for your statement that the is a difference between Griesedieck—
 - A. Yes, sir.
 - Q. Did your customers ever tell you that?

- A. That there was a difference in cans and bottles? Well, I think there is a difference in flavor in all cans and bottles.
- Q. Now, I am talking about any difference of the Griesedieck Beer in bottles prior to and subsequent to this particular
 - (506) A. Oh, no, I couldn't say that.
 - Q. They did not?
- A. They may have, I don't know. I don't recall of any incident.
- Q. Do you know the process by which Budweiser is brewed?
 - A. No. sir.
- Q. Is there the same difference between Budweiser in the bottle and Budweiser in the can as there is between tiriesedleck in the bottle and Griesedleck in the can?
 - A. That I don't know, sir.
 - Q. Is there any difference?
- A. There is a difference in taste because I have drunk both of them.

Mr. Mayer: That is all we have.

Mr. Baker: That is all we have.

In you have a question?

Hearing Examiner Hier: Yes.

What do you dispense your Michelob over the bar at.

The Witness: At 20 cents, sir.

Hearing Examiner Hier: For how many ounces?

The Witness: Approximately 12 ounces.

Hearing Examiner Hier: Is that the amount, the same amount in the can?

The Witness: Yes, sir.

(507) Hearing Examiner Hier: Then give me your experience in selling Michelob as against Griesedieck canned Beer. Which does the better with you?

The Witness: Well, I probably sell more gallons of Michelob than I do Griesedieck.

Hearing Examiner Hier: Give me your same experience of the Michelob as against Falstaff.

The Witness: I probably sell more Michelob than I do Falstaff by the gallons.

(508) Hearing Examiner Hier: Let us compare Budweiser in the bottle, which sells for 30 cents and a glass of Michelob that sells for 20 cents. What has been your experience there?

The Witness: I sell more Michelob. Hearing Examiner Hier: More Michelob.

Any questions, gentlemen?

You are excused.

The Witness: All right.

(Witness excused.)

Mr. Barton: I call Mr. Florini.

JULIO FLORINI was thereupon called as a witness by the Respondent and, having been first duly sworn by the Examiner, testified as follows:

Direct examination

Hearing Examiner Hier: Will you give us your name. The Witness: Julio Florini.

Bearing Examiner Hier: All right, you may sit down

By Mr. Barton:

- Q. For the record, Mr. Florini, what is your residence?
- A. 314 West Scott, Sullivan, Illinois.
- Q. How far from St. Louis is Sullivan, Illinois, located?
- A. Approximately 125 miles.
- Q. It is in the middle part of the state, is it not?
- A. That is right.
- (509) Q. What is your business, sir?
- A. Tayern business. On the premises, and off the premises, both.
 - Q. How large a town is Sullivan?
 - A. 3400.
- Q. Most of your, a lot of your customers are from the rural area, I take it?
 - A. That is right.
 - Q. Most of them are regular customers?
 - A. That is right.
- Q. What percentage would you say are regular customers?
 - A. 90 per cent or better.
- Q. What brands of beer do you sell? First of all, how long have you been in the tayern business?
 - A. Since 1946.
 - Q. What did you do before that?
 - A. In the service.
- Q. What are your brands of beer that you sell in a package form?
- A. Falstaff, Griesedieck, Stag, Budweiser, Pabst, Schlitz, Miller's, Hamms; that is it.
 - Q. What was your leading brand of beer in 1953?
 - A. Griesedieck.
 - Q. What is your leading brand of beer now?

A. Falstaff.

(510) Q. Have you produced a tabulation of your Griesedieck purchases in 1953, 1954 and 1955, as well as your Budweiser purchases in those same years?

A. That is right.

Q. And some cost information?

A. Yes.

Hearing Examiner Hier: That will be 93-A, -B.

(The document referred to was marked Respondent's Exhibit 93-A and 93-B for identification.)

Mr. Barton: I offer it in evidence, Your Honor. Hearing Examiner Hier: You have no objection, I assume?

Mr. Mayer: No.

Hearing Examiner Hier: Admitted.

(The document referred to, heretofore marked Respondent's Exhibit 93-A and 93-B for identification, was received in evidence.)

By Mr. Barton:

- Q. Referring to Exhibit 93-B, I note that Griesedieca Brothers beer, your Griesedieck Brothers purchases, declined 24 per cent in the last six months of 1954 over the prior six-month period, the same six-month period, in 1956.
 - A. That is right.
- Q. What explanation if any—I take it that is the period (511) in which your Griesedieck Brothers break took place in your business, is it not!
 - A. That is right.

Q. What explanation, if any, do you have for that dropping off in Griesedieck Brothers sales in your place of business?

A. Well, most of my customers said that it was—they thought the beer was green, in their opinion, and had a bitter taste; and then this Krausend seemed to confuse the customers. They didn't know what it was, and I didn't know, and I still don't know.

Q. Were these people, these customers, regular customers that had been drinking Griesedieck Brothers before?

A. That is right.

Q. What did they, generally speaking, switch to?

A. Falstaff, generally; a few of them to Stag.

Q. In the period—when was that switch that took place, starting in what month?

A. I think July of 1954.

Q. And are those customers still with you?

A. That is right.

Q. Have any appreciable number of them switched back to Griesedieck Brothers?

A. No, they haven't.

Q. Would you say that the switch of those enstoners was the principal explanation for your drop-off in Griese-dieck Brothers sales?

(512) A. The switch of the customers-

Q. The customers you have in mind who have been oug-time customers?

A. Those and several others.

Q. Pardon me.

A. Their switch is the reason for the drop-off, yes.

Q. Do you know the names of those customers?

- A. Yes, I know several names.
- Q. Has there been any change in the prices at which you sold any of the beers you are handling since January 1, 1954?
 - A. No, there has not.
- Q. At what price do you sell Budweiser, Miller's, Hamms, over the bar?
 - A. 30 cents.
- Q. What price do you charge for Falstaff, Griesedieck Brothers, and Stag?
 - A. 25.
 - Q. Do you have any other brands at a different price!
 - A. No, I don't.
- Q. On the take-out six-pack, I take it, that is the most popular take-home package, is it not?
 - A. That is right.
 - Q. Six-can package?
 - A. Six or twelve.
- Q. I see; and what is your price for six-can Budweiser (513) and Hamms?
 - A. \$1.30.
 - Q. What is your price for Falstaff?
 - A. Just a minute; Budweiser, \$1.50; Falstaff, \$1.30.
 - Q. Budweiser-
 - A. Budweiser is \$1.50, and Falstaff, \$1.30.
 - Q. What do you sell Hamms at? The six-pack.
 - A. \$1.50.
 - Q. And the same for Miller's and Pabst!
 - A. That is right; all the premium beers.
- Q. You personally wait on the trade in your place of business, do you not?
 - A. I do.

- Q. Did you taste the Griesedieck beer when customers complained about it?
 - A. No. sir.
 - Q. What beer do you drink?
 - A. I don't drink at al!.
- Q. Who first contacted you with respect to testifying here?
- A. Frank Ronchetti, the Budweiser distributing man at-
 - Q. In your area?
 - A. Yes.
- Q. And you talked to Mr. Hallquist and Mr. Ingamells, did you not?
 - A. I did.
- (514) Q. Your expenses are being paid to come here by Anheuser-Busch, are they not?
 - A. That is right.
- Q. Are you related to any employee of Anheuser-Busch?
 - A. No. sir.
- Q. Are you financially indebted in any way to Anheuser-Busch?
 - A. No. sir.
 - Q. You are testifying under subpoena, are an not?
 - A. Yes, sir.
 - Q. Have you ever handled Blatz beer!
- A. Two or three years ago, yes, but I don't handle it now.
 - Q. What price did it sell at when you handled it?
 - A. Same as Budweiser and Schlitz.

Hearing Examiner Hier: Mr. Florini, if I walked into your bar and tossed 30 cents on the counter and said, "Give me a bottle of beer," what would you do!

Julio Florini, for Respondent-Cross

The Witness: What would I do? I would say, "What kind, sir".

Hearing Examiner Hier: And I say, "I don't care." What would you hand me?

The Witness: I would give you Budweiser, or Schlitz. Hearing Examiner Hier: You may cross examine.

(515) Cross examination by Mr. Mayer:

- Q. Do you handle draft beer in your tavern, Mr. Florini?
 - A. Yes, sir.
 - Q. What beer is it?
 - A. Budweiser.
 - Q. Budweiser.

How long have you handled Budweiser on draft?

- A. Since 1946.
- Q. Have you also handled bottled Budweiser and pack age Budweiser for that length of time?
 - A. Yes, sir.
- Q. I am sorry, I did not get it; what was the name of the Budweiser distributor in this area?
 - A. Frank Ronchetti.
- Q. How many liquor outlets, similar to yours, sir, are there in Sullivan?
 - A. Four.
- Q. Do they constitute the only four places in the town that you can buy liquor, either on or off the premises!
 - A. That is right.
- Q. I think you said that as a result of some dissatisfaction with the product, several customers of yours switched from Griesedieck Brothers to Falstaff and Stag: is that correct?
 - A. Yes.

Julio Florini, for Respondent-Cross

(516) Q. Why was the switch, Mr. Florini, to Falstaff and to Stag rather than to Schlitz or Budweiser or Pabst, or any other Leer that you happened to have?

A. I would say because of the nickel difference in the

selling price.

Q. Do you have a price-conscious clientele at your store?

A. I have a working class, farmers and factory workers.

Q. And five cents, therefore, in the retail price, makes a difference in the selection of the beer by your customers?

A. That is right.

- Q. Mr. Florini, directing your attention to Respondent's Exhibit 93-A, would you tell us what those figures in the column under the heading "1953" stand for?
 - A. That is the total sales for 1953 of each brand. Hearing Examiner Hier: In dollars or cases?

The Witness: In cases, sir.

Hearing Examiner Hier: Cases.

By Mr. Mayer:

- Q. Is that translated into 24 twelve-ounce cans, or is it pints or quarts, or seven-ounce bottles, or what type cases are they?
- A. It would be cans and bottles, with just a very few quarts in the Griesedieck. The Budweiser I don't handle quarts.
 - Q. In other words, it is all 12 ounce?
 - A. That is right; all 12-ounce.
 - Q. What does the notation "N.A." stand for?
- (517) A. That is on Miller's, Pabst and Schlitz, not available. I don't separate my beers according to brands. I separate them according to purchases and beer sales.

Julio Florini, for Respondent-Cras-

- Q. Does that mean then you had no sales of Schin Pabst or Miller's in 1953?
 - A. That means I didn't compile that information.
- Q. I am sorry, but did you state your leading seller it 1955 was Falstaff?
 - A. Yes. sir.
 - Q. This exhibit would not show that, would it!
 - A. It would not show it.
 - Q. What was your leading seller in 1954!
- A. It would possibly be Falstaff or tiriesedieck; it is one of those two.
 - Q. What was your leading seller in 1953?
 - A. Griesedieck.
- Q. Now, when was the first time that the existence of the Krausend process even came to your attention?
- A. The first time I noticed it was seeing all the various ads, and hearing people talk about it.
 - Q. When was that, sir.
- A. I would say the middle of 1954, or thereabouts; I couldn't pinpoint it.
- (518) Q. How long did the Griesedieck Brothers use the Krausend process in the manufacture of their product!
 - A. I don't know, sir.
- Q. Did you ask their salesman about it or talk to them about it?
 - A. Not about the Krausend process.
- Q. I am sorry, maybe I am mistaken, but did you testify that the Krausend process or here was the largest factor in the decline?
 - A. No, I said that was one of the factors.
 - Q. I am sorry, sir.

Julio Florini, for Respondent Cross

What were the other factors, and what was the major factor?

- A. Well, I can't say what was the major, but the change of their beer and the loss of the broadcasts. Our town is very baseball-minded, and so are the customers, and that seemed to have quite a bit to do with it.
 - Q. And which had the most influence?
- A. I think the loss of the broadcast; that is my own opinion.
- Q. In your 11 years' experience, Mr. Florini, have you ever bought Budweiser at the same price at which you purchased Falstaff, Griesedieck or Stag?
 - A. No. sir.
- Q. Have you ever resold Budweiser at the same price at which you resold Falstaff, Griesedieck or Stag?
 - (519) A. No, sir.
- Q. Is it true that Budweiser has always been the higher priced beer, both in your purchasing price and in your reselling price?
 - A. Yes, sir.

Mr. Barton: Higher price of what?

Mr. Mayer: The witness evidently understood it.

Mr. Barton: I object to the form of the question. So far as-

Hearing Examiner Hier: Now, wait a minute-

Mr. Mayer: The question was, has Budweiser always cost you more to purchase than either Griesedieck, Stag or Falstaff?

The Witness: Yes, sir.

Er.Mr. Mamer:

Q. and in your reselling have you always resold Budweiser at a higher price than you resell Griesedieck, Stag. or Falstaff?

A. Yes, sir.

Mr. Mayer: That is all we have.

Hearing Examiner Hier: You are excused, Mr. Florini; thank you.

(Witness excused.)

Mr. Barton: Your Honor, would it be a suitable time for taking a short recess?

Hearing Examiner Hier: Yes, it would. We will take (520) a five-minute break.

(Short recess.)

Mr. Baker: Dr. McClary.

J. E. McCLARY was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination

Hearing Examiner Hier: Give us your name, please. The Witness: J. E. McClary.

Ba Mr. Baker:

- Q. What is your home address, Dr. McClary?
- A. St. Louis, 5 Whitegate Lane, St. Louis.
- Q. What position do you hold with the Anhenser-Busch Company?

- A. Director of the Brewery Research Laboratory.
- Q. What are the functions of the Brewery Research Laboratory?
- A. To improve, where possible, methods of control; to supervise and watch that the methods are adequately carried out, and to do research on raw materials, developments of any nature which might improve our product.
 - Q. Dr. McClary, how long have you held this position?
 - A. Three years.
- Q. And prior to that time what position did you hold with the company?
- (521) A. I was Director of Research in the Central Laboratory.
- Q. And in the past three years all of your activities have been confined to beer only?
 - A. It has,
- Q. How many years were you in the position of Director of Research prior to your present position?
 - A. Five years.
 - Q. And prior to that?
- A. Three years Assistant Director of Research, two years prior to that as Research Chemist.
 - Q. How far back does that take us?
 - A. January 1943.
- Q. Doctor, would you outline your educational background qualifications, please?
- A. I was granted a Bachelor of Science Degree at Southeastern State College, Durant, Oklahoma, 1932; Masters Degree, University of Missouri, 1935; Ph.D., Missouri University, 1941.
 - Q. What did you do immediately after graduation?

- A. I remained at the University as an instructor before coming to Aubeuser-Busch.
- Q. How many people do you have on your staff carrently working under you!
 - A. 15.
 - Q. What is the composition of your staff!
- A. 5 are specialists in certain fields, malting, brewing (522)—organic chemistry, biological chemistry; other argumentate chemists and technologists.
- Q. Would you please state the titles of any articles or books that you have published or that you have written, and which have been published, and the place of publication?
- A. To get that exact, I probably would have to refer to notes.

Hearing Examiner Hier: Do you concede his professional qualifications in the field in which he is engaged!

Mr. Mayer: Yes.

Hearing Examiner Hier: The answer is, yes.

By Mr. Baker:

- Q. Are you the holder of any patents, Doctor?
- A. Yes, one patent.
- Q. Now, in the conduct of your laboratory you make periodic tests of Budweiser beer?
 - A. We do.
 - Q. Will you tell us, please, the purpose of these tests?
- A. Here is a perishable product. It is, in fact, rather difficult to produce a beer which will maintain satisfactory quality over any extended period of time.

It is further impossible to examine by any means a fresh beer and determine whether or not that beer will retain its character or for how long.

We, therefore, make those tests as two tests for the (523) uniformity of the product, as it is, and as it ages, and also to determine under what conditions we can expect that product to remain good, and for how long under any given set of conditions.

- Q. Tests the keeping qualities of the product?
- Λ . Tests the keeping qualities, as well as the original quality; it does both.
- Q. Sometimes referred to as the shelf life of the product?
 - A. Yes; that is, the keeping quality.
- Q. You mention uniformity of quality. Why do you mention that?
- A. Uniformity probably is one of the dominent marks of any food product or brand. Undoubtedly there are native preferences that people have for tastes, but I think there is also no question but tastes which may be objectionable to some people have a consumer acceptance that is acquired.

If a product then has and retains over a long period of time a specific character, it will hold a customer acceptance within its group. But if the quality varies originally or if it spreads as it ages, then it is difficult to pin any one acceptance point to that prod at. I think that is rather general in food industry.

- Q. Do you make periodic tests of competitive beers?
- A. We do.
- Q. Why?
- (524) A. There again I think quality in a product is a relative matter, and in order to compare the various aspects of our own product with the industry, we conduct

these other tests as a yardstick for judging our own position.

- Q. A relative yardstick?
- A. A relative yardstick, yes, quality.
- Q. How are such competitive beers obtained for the purpose of making tests?
- A. Competitive beers are obtained for us by our sales department in St. Louis from regular retail outlets and in the regular retail package.
- Q. Do you run the same tests on Budweiser and competitive beers?
 - A. Exactly the same tests.
- Q. Will you describe, please, the normal procedure in making tests?
- A. We get our normal sample is one case, 24 12-ounce bottles in this particular category about which we are talking.

We then use four to six of those bottles to determine the state of the beer when we get it, the gas content and the air content.

One group, usually two bottles, will be placed at a cool temperature, 30 degrees Fahrenheit, for a week simulating normal outlet conditions in a cold box.

On those samples we run a turbidity or haze measure.

(525) Other groups of four to six bottles each will be placed at 100 degrees Fahrenheit or at 70 degrees Fahrenheit for punishment in order to determine the effect of temperature on the sample.

One group of samples we leave at a hundred degrees for two weeks, after which we put it at 30 degrees, chill it, make our tests on it.

Another group will remain at a hundred degrees for four weeks and the tests will be run on that.

Another group will be placed at 70 degrees, held for three months, then chilled and tested.

Another group is held for six months at 70 degrees, after which it is tested.

- (526) Q. At times you get one case in—at the times you get one case in of beer to be tested, by the time all of the tests are run, of the 24 bottles in that one case, it would be approximately three months from the time you purchase it.
 - A. Six months.
 - Q. Six months, I beg your pardon.
 - A. Yes.
- Q. Why are the tests conducted at these time intervals. Dr. McClary, say!
- A. These time intervals have usually a specific purpose. We run two weeks at the 100 degrees as the quickest test we can get to give us some information about how well our beer is holding in uniformity of shelf life. And then when our beer is put out into the field, at different seasons of the year, we have different temperature punishment situations, shipping and in storage. 100 degrees is about maximum temperature and in some areas even normal for mid summer storage conditions, 70 degrees is fairly well representative of most of the seasons of the year for storage conditions of beer.

Then by running these tests we are able to pretty well predict what will happen to our beer under any storage conditions, provided we know the temperatures that are elecuntered.

Q. Now, Doctor, from a practical commercial standpoint, what are the most significant tests of those that you have mentioned?

A. The most significant tests that we run on the beare air, and turbidity after punishment—turbidity after (527)—punishment.

Hearing Examiner Hier: What does that term mental that you used!

The Witness: It is the cloudiness as opposed to a braliant, that you can see through a cloudy, hazy appearance

Bu Mr. Baker:

Q. The different storage time periods—you have set eral different time storage periods. Of those different storage time periods which do you consider the most conmercially significant?

A. The four weeks at 100, because that approximate about the worst conditions that our beer is subjected to 2 temperature and time, and the three months at 70 because that will represent the normal maximum punishment that our beer gets for most of the year and 15 most areas.

Q. Would you outline briefly the problems of the brew ery that makes these tests necessary!

A. The problem, first of all, of course, is to produce a uniform, stable product, and facing the delays that are always encountered at least always in our experience, we have to know what is going to happen to that beer. We also have to know what we can do about inventories and shipping.

So after we produce the most uniform beer that we know how to produce then we have to know what happens to it, and how (528) we can expect it to behave in the trade-

- Q. Well now, based on your tests, do you suggest the maximum inventories for wholesalers and branches, different times during the year!
 - A. We do.
- Q. Relative to this, Dr. McClary, what are the maximum times that beer can be safely stocked by your whole-salers and branches, say, in the summer and winter?
- A. In the middle of summer when the temperatures are apt to range up to 100 degrees or better, we recommend that they do not hold stock more than four weeks. Other periods of the year when the average temperature to which beer is subjected is 70 to 76 degrees, we recommend to them that their inventory can spread out to three months or even longer.
- Q. I think you have mentioned the test that you run. Wen' you tell us specifically what you measure in the various tests?
- A. We measure the gas content, that is, the carbon dioxide, the Co2, which given the sparkle characteristic, that has to do with gushing for one thing and the acceptance for another.

Then the air content we measure, because air has a definite effect on beer. We measure the turbidity because the turbidity is in itself objectionable and because it is an indication of some other things that can happen to beer.

- Q. Will you describe, please, how tests of air and turbidity (529) are run?
- A. To measure for air, it is necessary to drive all of the gas out of a bottle. We do that by placing it in a machine set up in such a way that as the gas comes from the bottle it passes through a caustic soda solution, into a long burette or graduated glass tube. Any gas that is not

carbon dioxide will be collected in the top of that tube, where the tube is very narrow and it can be read volumetrically to a very narrow margin.

Q. Then measure what is left?

A. Yes; all of the gas that isn't absorbed by the causis is air.

Q. Yes.

A. That is measured volumetrically in that graduated cylinder.

Q. Would you describe the turbidity test?

A. Turbidity, as I have said, is a milkiness that shows up in the beer which is due to the formation of solid particles suspended in the liquid.

The principle that we use is the reflection of light from those solid particles and a measure of the intensity of the light. We have a machine called a Nethuror-Photometer. That machine is set up in a way that we can put place a clear glass test tube containing the beer in the jath of a beam of light. The light strikes the beer and light then is reflected at right angles from those solid particles. That reflected light is measured by a Photocell, and we read the measure of (530) turbidity on a dial which we just simply give arbitrary units.

Q. That is an objective test?

A. That is an objective test. There is no guess work or judgment involved in it. We take a reading off a dist

Q. Formerly and perhaps some places today there are subjective measurements for turbidity?

A. Yes, it is common practice still to hold it up to a window and try to judge how much cloudiness there is in the beer. We abandoned it because it was subject to for great individual variation among operators.

Q. Is there any other objective test that you know of for turbidity?

A. There are other objective tests for turbidity. There is light transmission but that is shown to be in error. That is, it is not a reliable test. And there are, in fact, so other objective tests used in the measure of beer quality.

Q. Would you give me the different scale readings of the Nefluoro meter with respect to the turbidity of beer?

A. A bright beer will give a reading just about the same as perfectly clear tap water, units eight to twelve.

A slight haze, one that would not be noticed in ordinary trade would run 12 to 20.

A distinct haze would possibly be noticed, if you looked at it carefully up to a bright light, would read 20 to 20.

30 to 40 would be observable in an ordinary fight, and (531) above 50 has a distinctly milky appearance.

Q. Above what reading would you say the beer is undesirable?

A. Anything above 30 would probably be called undesirable. My reason for stating that is many people fancy themselves as beer experts if they think it is a little bit off taste and hold it up and see that it is a little bit cloudy, then they are convinced.

Q. Dr. McClary, you said that air is of great significance. Will you explain why, please; air in beer, I mean.

A. Air is known to have a very deleterious effect, harmful effect on beer. In any appreciable quantity on the order of just a few cubic centimeters, will after a few weeks at temperatures, room temperature and above, will cause a very distinct hazy effect and will become off taste.

This work was first brought out by Wallerstein Laboratories. They definitely proved back as far as 1939, that air cansed a development of a hazy and off taste in beer.

Q. Have you confirmed their work?

A. We definitely have confirmed their work and have gone further in establishing definite limits that fit our evabeer. It varies with different beers,

Q. Who is it—or what is the Wallerstein Laboratory—what type of an organization is that?

A. They are a service organization to the brewing industry. They operate a research laboratory and are a magnifacture (532) and selling group for brewing specialties.

Heaving Examiner Hier: Up to this time you have been talking about packaged beer only and also what is known as light beer as distinguished from dark beer.

The Witness: That is correct.

Bu Mr. Buter:

Q. Has Wallerstein conducted research with respect to air and turbidity?

A. They have. They were pioneers in development of those facts that are known in the trade, that is called exdation and is generally accepted as a fact.

Mr. Baker: Your Honor, at this time I would like to have marked as Respondent's Exhibit No. 94, an article entitled "Oxidation in Beers, Oxidation Stability of the Finished Product" by Philip Gray and Irwin Stone, Wallerstein Laboratories, 1939.

Hearing Examiner Hier: It is so marked for its identification.

(The article referred to was marked Respondent's Exhibit 94 for identification.)

Mr. Baker: That is dated 1939.

Hearing Examiner Hier: All right, that is Exhibit No. 94.

Mr. Baker: And also an article entitled "Systematic Study of the Influence of Oxidation on Beer Flavor" by Philip P. (533) Gray, Irwin Stone and Lawrence Atkin of Wallerstein Laboratories, presented at the 1947 annual meeting of the proceedings of the American Society of Brewing Chemists and pages 151 to 161 as Respondent's Exhibit 95.

That is in 1947.

Hearing Examiner Hier: That is so marked.

(The article referred to was marked Respondent's Exhibit 95 for identification.)

Hearing Examiner Hier: Off the record.

(Discussion off the record.)

Hearing Examiner Hier: On the record.

Ba Mr. Baker :

Q. Doctor, I refer you to RX94 and on the first page, the second full paragraph where it is stated, "A considerable body of literature has accumulated in the past few tears on the general subject of oxidation in beer as related to its stability. It would be superfluous at this time bego beyond the mere statement of the fact that physical stability of beer is definitely impaired by contact with air. Such oxidation reactions are necessarily influenced by other factors; and the instability manifests itself in grad-

ual changes in color and taste, loss of flavor, and haze development."

Do you agree with that statement?

A. Yes, sir, I do.

Q. Referring you now to Respondent's Exhibit 95, to the (534) first sentence and I quote: "That beer flavor is injuriously affected by oxidations generally accepted without question."

Do you agree with that statement?

A. We do. We have confirmed that, I believe, in our own laboratories as well.

Mr. Baker: I offer Exhibits 94 and 95.

Mr. Mayer: May I ask the purpose of the offer of these documents, sir.

Hearing Examiner Hier: What is the purpose?

Mr. Baker: It may not be necessary. Dr. McClary is an expert. They do confirm his testimony and they confirm his work and his research findings, and he has confirmed their research findings.

Hearing Examiner Hier: Your purpose really is to prove—to offer some evidence, at any rate, that oxidation does interfere?

Mr. Baker: That is right.

Hearing Examiner Hier: I don't know that it is necessary to have in this record highly scientific material.

Mr. Baker: I will withdraw the offer of the documents.

Hearing Examiner Hier. All right. Unless I see by cross-examination they make some inroads on the doctor's conclusion, why I think we can take it as facts.

(The articles heretofore marked Respondent's (535) Exhibits 94 and 95 for identification were withdrawn.)

By Mr. Baker:

- Q. What is the practical commercial significance of high air content in beer?
- A. Any package of beer which contains more than what is normal for that beer, if it happens to be subjected to more than a normal period in getting from the plant to the consumer, will become very badly off taste and turbid.
 - Q. Were you in the courtroom this morning?
 - A. I was.
- Q. Did you hear one of the retailer witnesses say that he brought in new beer, he put it in the bottom of his cooler and put the old beer on top?
 - A. Yes.
- Q. Can you operate on that assumption that all bartenders would be that careful?
- A. I must admit at this point, however, that insofar as storing in the cold box is concerned, would not—would have little effect on the oxidation. The temperature is too low for any reasonable time to affect it.
 - Q. The commercial problem then would be-
- A. The higher temperatures and rotation in warehouses, and in his storage places of storage.
- Q. Does air content of beer change with the age of the beer?
 - A. Not unless there is a defective cap on the bottle.
- (536) Q. Will you please explain for us the various ways in which air gets into the beer?
- A. It is very difficult to exclude air from beer. Air is soluble in water, and will be picked up any time liquid, rspecially at cold temperature, is exposed to air.

Many breweries, therefore, have difficulty delivering beer to the bottle shop with a low air content. The greatest point of variance is in the bottle shop where very great care must be exercised to exclude air. Normally that is done by causing the beer in the bottle or can to foam immediately after it is filled. That is done either by a slight jar on the side of the bottle or by injecting a jet of carbon dioxide into the surface of the beer. As that foam rises it drives, pushes the air out. You have a blanker of carbon dioxide and foam filling the bottle or can.

If that goes immediately without any delay or interruption to the capper before that foam breaks, the air content can be held at a very low level. But uncontrolled operation leads to a great deal of trouble at that point because the minute, if the foaming isn't done properly of if there is some stoppage of the line so that the foam breaks, then you will get high air in the beer.

Q. Doctor, what is the commercial significance of turbidity test?

A. First of all turbidity is objectionable in itself (537) because when people see it in the beer they are driking they don't like it but perhaps more of interest, as was pointed out in the Wallerstein papers, is definitely correlated with change in taste and flavor of the beer. It will therefore give us a measure of shelf life or stability or what happens to the beer in the trade, and also, if we know the air level, give us a very good guide to the uniformity of our production operation in the brew house and so on.

Q. Does the development of turbidity necessarily depend on air?

A. It does not. In the presence of air, high air, any beer will become turbid, if it is too high. Each depends on the brewing process and a moderate level of air can be compensated for in the brewing process by methods that are well-known in the brewing industry.

Q. Dr. McClary, have you set up standards for package Budweiser or to put it another way, tolerance specifications

for air?

A. We operate on close tolerances for air in packaged Budweiser. Those have been set up and the amount of air that we permit in the bottle will depend, naturally, on the size of the bottle.

Q. Well, taking the standard 12 ounce bottle, do you

have a maximum air tolerance for that package!

A. We do have. We know that at low, relatively, low levels of air, the air fluctuation within that level has very little effect on the quality of the beer.

(538) Q. What is the tolerance limit:

A. For Budweiser that tolerance limit is approximately one and one-half cubic contineters per 12 ounces of beer.

Q. And you have also tolerances on the other sized packages?

A. Yes.

Q. Does that relate to your total bottles or a certain percentage of bottles that have to have have?

A. That relates to all packages, cans and bottles of Anheuser-Busch.

Q. Dr. McClary, when was the 1.5 C.C. maximum air telerance established for the standard 12 ounce bettle?

A. That level, I believe, was set up January, 1953.

Q. And how did you arrive at that limit?

A. We arrived at that limit by checking air content and turbidity of beer over about a ten months period prior

to the issuance of that report. In that report we found that the quality tended to be very erratic if the air was above that level. Below that 1.5 C.C. per 12 ounces of beef we could detect no influx. That was therefore set as our standard.

Q. One point five c.c. is sort of the breaking point!

A. That is the breaking point. Above that it is hard to predict what will happen.

Mr. Baker: At this time, Your Honor, I would like have marked for identification as Respondent's Exhibit No. (539)—96, a report entitled "Research Division Progres-Report" signed by J. E. McClary, dated January 13, 1955, consisting of a three-page typewritten report, with attacked tables and graphs.

Hearing Examiner Hier: All right. That may be a marked.

(The report referred to was marked Respondent's Exhibit 96 for identification.)

By Mr. Baker:

Q. Dr. McClary, I show RX96, for identification, and ask you if this is the report that you prepared as a result of the ten months research to which you have testified?

A. It is.

Q. I refer you to page 3, and ask you what conclusions are there stated with respect to the effect of air?

Hearing Examiner Hier: Are you going to offer this in evidence?

Mr. Baker: Yes.

Hearing Examiner Hier: No point in him stating it too. Do you have any objection to this exhibit?

Mr. Mayer: No.

Hearing Examiner Hier: It will be admitted in the record.

(The report referred to, heretofore marked for identification Respondent's Exhibit 96, was received in evidence.)

(540) Hearing Examiner Hier: You can cross examine him on it, of course, but I don't see any sense of going into it now.

Mr. Baker: There is one thing I would like to clear up.

By Mr. Baker:

- Q. Referring to page 3, Dr. McClary, you conclude, "Stability is directly related to air content. The adverse affect is apparent when the air content exceeds 1.5 millilities for 12 ounces of beer."
 - A. That is correct.
 - Q. What is a millilitres?
- A. It is equivalent of a cubic centimeter for all practical purposes.
 - Q. And one cc is the standard you have set up?
 - A. That is correct.
- Q. I also note from RX96. Dr. McClary, that you refer in here to "startup beer" as well as regular production. Also, the 1.5 c.c.—first, would you describe what "startup beer" is?
- A. It is the first beer that comes off of the line from a machine that has been shut down and then put back into operation. This study was done at that point because of the difficulty of getting the air situation under control at that point.

Q. Is that the time when air is most likely to get in in (541) excessive amounts?

A. Yes, that is true.

Q. And one point five c.c. tolerance that you set applies to both "startup beer" and production in the line!

A. To all of our beer in packages, cans and bottles.

Q. Dr. McClary, prior to the time that you made this study to establish this tolerance which was, I believe. January 13, 1953, what methods did Anheuser-Busch employ to control air content?

A. The same methods of measurement vere used. However, there were no set specifications.

The rule was to hold the air as low as possible in the operation.

Q. Dr. McClary, what operational measures are taken by Anheuser-Busch to control distribution of Budwelser to prevent over-aged beer from getting to the consumer!

A. Mostly an educational process on the part of our drivers and salesmen to follow up to see that the stock is rotated and moved promptly and in order; and we also have people on call to examine any beer that is suspected that shows up in the field. It is picked up by the company-

We also have a technical group in our sales department that is always in the field and alert to watch for the problems.

Q. You have testified that you have regularly made tests on (542) Budweiser and that you have also made regular tests on competitive beers.

Since January 1953, have such tests been made of Griesedieck Brothers, Stag, Falstaff beers!

A. They have,

- Q. How large are the samples of competitors beer of those three competitors that you have obtained for analysis and how frequently have you obtained such samples?
- A. Always in case lots, 24 bottles. And an average eight or nine times per year.
- Q. And the 24 bottles are distributed in the test as you have heretofore described?
- A. We have already described that distribution and coverage.
 - Q. How long has this procedure been followed?
 - A. Since early 1952.

Hearing Examiner Hier: I am interested in that, Dr. McClary. Supposing you find when you test Falstaff beer that it has too much air in the bottle. What difference does that make to you or to Mr. Busch? If your conclusions are correct, Falstaff will fall off in sales because of the taste consideration.

The Witness: Actually, this material has never been used in any public manner whatsoever. But it is information that is useful to us and the purpose of it is to find out as nearly as we can what is the situation in the (543) adustry.

Hearing Examiner Hier: That is what I am trying to get at. Supposing they have too much air and oxygen in the competitive beer. That certainly is no worry to you.

The Witness: That is true.

Hearing Examiner Hier: Supposing they have less han you have. The only point of interest that I can figure there is how do they get down that low. You can't find that out from the test.

The Witness: Nevertheless, if they can show us that is possible by an analysis of the product, it is helpful to sain going out for it.

Hearing Examiner Hier: I can see that point.

The Witness: Furthermore, if they have some method—for example, if their air is running high—higher than Budweiser will tolerate—it would be certainly very interesting to us to start to find out why, what are they doing to compensate for it. We know what these compensating materials are, and what they will do within reasonable bounds. I think we get a great deal of value from the research standpoint.

Hearing Examiner Hier: Supposing you find that Stagbeer, for instance, is running pretty high in air. Do you pass that information on to your salesmen for use in selling Budweiser beer?

The Witness: We never have.

(544) Hearing Examiner Hier: I didn't think so, Go ahead.

By Mr. Baker:

- Q. Dr. McClary, is there any way of knowing when the beer which you pick up for testing was bottled?
 - A. Yes, the bottles and cases are coded.
 - Q. Is that true of all local beers in St. Louis!
 - A. Yes.
 - Q. Griesedieck and Falstaff?
 - A. It is.
 - Q. And-
 - A. Stag.
 - Q. -Stag. yes.
 - A. Yes.
- Q. Do you make any effort to obtain samples to 20 beer as fresh as you can?

A. We do. We like to make as far an appraisal of their situation as we possibly can. That is, it is worthwhite to us to know exactly what their situation is.

Q. What has been your experience in this regard?

A. Most of it we get a week to ten days, but at times we have had difficulty in getting beer less than a month old or even older.

Mr. Baker: May we go off the record a moment? Heating Examiner Hier: Yes.

(545) (Discussion off the record.)

Hearing Examiner Hier: On the record, W. have marked for identification here as Respondent's Exhibit No. 97, a graph computation entitled "Total Air in C.C. per 12 Ounce Bottle, Averages of 64 Bottles for 24 Bottle Carton."

That is for 1953, 1954 and 1955.

And as Exhibit No. 98, which is the same thing, except that it refers to turbidity of beers after four weeks at 100 degrees Fahrenheit and one week at 30 degrees Fahrenheit.

And Exhibit No. 99 is the same thing, wit's reference to turbidity of beers, after three months at 70 degrees Fahrenbeit, and one week at 30 degrees Fahrenbeit.

(The graphs referred to were marked Respondent's Exhibits 97, 98 and 99 for identification.)

By Mr. Baker:

Q. Dr. McClary, I show you Respondent's Exhibit 97, 25 and 99 and ask you if these were prepared under your supervision and direction?

A. They were,

Q. I ask, Dr. McClary, if they contain all of the information with respect to the tests on the particular beers show, thereon?

A. Yes.

Q. Was the information contained on these derived from your laboratory books and records except in the normal course of (546) business?

A. It was.

Q. And it constituted a transference of that informatical from your books and records to chart form, is that correct

A. That is correct. The points given on those charts were transferred directly from the laboratory books that were kept as a daily record of the proceedings in helaboratory.

Q. Does it likewise contain all of the information for particular tests shown on the exhibit for Budweiser heer

A. Of that category of beer, St. Louis production, yes, sir.

Q. That is the 12 ounce returnable bottle?

A. May I clarify a point here? You said all of the information. No, we don't have the six months samples of there, nor do we have the carbon dioxide content and some other things.

Q. I asked for the particular tests shown?

A. Yes.

Q. Air, four weeks at 100 and three months at 70%

A. Yes, sir: that is correct. That is all of them.

Mr. Baker: I offer these exhibits. Your Hoper, at I ask that they be scaled after they have served our purpose here.

Hearing Examiner Hier: Do you have any object at first of all, to the receipt in evidence of these exhibits?

(547) Mr. Mayer: No. Subject, of course to their making available to me, if I need it, all of the basic books and record which were used in making up these diagrams, for my inspection or anyone under our prevision.

Hearing Examiner Hier: Is that remaind in the court room!

Mr. Baker: Do you have the you all of the basic original records from which this was made?

The Witness: The original records are all here and available.

Hearing Examiner Hier: All except the beer.

The Witness: The records are here.

Hearing Examiner Hier: The second question is, do you have any objection to these exhibits being scaled?

Mr. Mayer: No, sir.

Hearing Examiner Hier: Very well, Exhibit 97, 98, and 99, Respondent's Exhibits, are admitted in the record. And since they refer to competitive beers and the analysis thereof, they will be sealed in accordance with the request of counsel.

And by that I mean that they will not be shown or made public to anyone except counsel in this case, the hearing examiner and the Commission, of course, after the case is closed.

(The charts referred to, heretofore marked for identification Respondent's Exhibits 27, 98 and 99, were received in evidence.)

348) Bu Mr. Baker:

Q. Dr. McClary, referring to RN97, will you please describe what that chart shows!

A. On this chart we have plotted the data for the total nir content of the samples of beer during the year 1955 1954 and 1955. The years are divided into blocks acpose the page from left to right.

The marking on the left-hand side up, the vertical safrom one to four, designates the cubic centimeters of all represented by that level on the graph.

I have drawn a broken line across as a guide which was as standard. It does not necessarily mean standar for other beers but it is just a reference point for these charts.

The broken horizontal line going across connects to average values for air content obtained in the individua samples taken during the year.

The sample date is listed on the first lettering below the dark line—the dates, 4-21, 5-22, and so on, 1953, and so on.

- Q. Now taking 4-21, that test, on beer "e", right under the 4-21 appears the numeral "6" opposite a legend "man beet at samples." That was the number of fortles for wore tested for air content, is that correct!
 - A. That is correct. In that sample there were six
- Q. And underneath that the "age in days" when the particular— (549)—the age of that particular—
 - A. That beer was seven days old when we got it yes
- Q. And the vertical line running from a low point of 55, to point 80, what does that designate?
- A. That designates the spread of air content, the 65 is the air content of the bottle containing the least air. The sec., the amount of air in that bottle containing the most air. The others were between, with the average at 75 is designated.

Hearing Examiner Hier: These circles on here are always the average?

The Witness: That is correct.

Bu Mr. Baker:

Q. Yes. All right, Dr. McClary, would you refer now to RX ! s, and please describe what this exhibit shows!

A. This exhibit is set up on exactly the same plan. Instead of plotting "air" we are plotting turbidity.

Where we had e.c. of air we now have from zero to 40 mits of turbidity.

Again, we have put the standard line for reference at 20. That represents a normal consumer beer at what should be a maximum range.

The date, the number of samples, the age, are designated in exactly the same way, and the maximum-minimum and averages and the lines connecting them are the same.

(550) Hearing Examiner Hier: Off the record.

(Discussion off the record.)

Hearing Examiner Hier: On the record.

By Mr. Baker:

Q. Now, Dr. McClary, would you describe what RX 99 shows?

A. It is exactly the same as Respondent's Exhibit 98, except for the time that the beer was stored prior to taking the data. It is three months at 70 and one week at 30 listend of four weeks at 100 and one week at 30.

Q. Dr. McClary, referring to RX 98, for beer "e", I note that on the test dated March 11, the turbidity of that beer ranged from a low of 28 to 50, and that was on a sample containing five bottles.

Would you please describe the appearance of a beer with a turbidity of 28 and a beer with a turbidity of 50

A. Well, the best bottle in that group with the turbidity of 28 would in a bright light appear semi-opaque, the hazewould be quite noticeable. One at 50 would be noticable sitting on a bar at a distance in milkiness or haziness.

Q. Referring to that same example, I note that the spread, that is on RX 98, that the spread 28 to 50, is a considerable spread and I wonder if you comment as to the significance, if any, of such a wide spread.

A. On that turbidity?

Q. Yes.

(551) A. Well, it indicates one of two things. Either the sample has very high air, or, the beer as it came from the brew house was not stable. We know it was not stable because the turbidity developed. It could be due to high air or due to fault in the brewing process itself.

Q. Now five of the bottles on that particular test case out of the same case of beer?

A. They did.

Hearing Examiner Hier: Is there a marked difference in air intake between sealing a can of beer and capping a bottle?

The Witness: It is—the can is much more difficult to control.

Hearing Examiner Hier: Does the heat necessary to seal that can have anything to do with it?

The Witness: No, it is a matter usually of speed. That can is moving so fast, that it sloshes and gets air in under that lid.

Bu Mr. Baker:

Q. I would like to turn to RX 97 now, the graph plotting "c" beer for air and I would like to have you interpret that for us, and tell us what in your opinion the significance of it is.

A. Running it chronologically through the years, that beer appeared fairly normal early in 1953. The average of the air (552) was about as normal for the industry and the spread was not excessive. However, there was definitely a trend upward, both in the average per package of beer and in the spread or lack of uniformity of air content between the packages, in a given sample. That trend reversed, well, only within the last few months, and apparently is on a downward trend as of this moment.

Q. What does this indicate to you, Dr. McClary, overall!

A. Well, it indicates to me that there definitely at some point in their operation there was lack of control. That is, of sir.

- Q. That is beer "e"?
- A. On beer "c".
- Q. On Exhibit 97 that you are referring to?
- A. That is correct.
- Q. And at what point did it seem to approach the greatest range of variation?
- A. Oh, about the midde of 1954 or shortly before. The worst spot was in April.
- Q. Now, Dr. McClary, referring to RX 98, would you bescribe the significance of the turbidity readings for beer "c"?

A. There again going in the same sequence, the data that this shows for turbidity of beer "c" for 1953, was quite normal or in fact quite good.

Again, in early 1954, there are indications that it was (553) badly out of hand. All of the samples, all of the individual packages, in several samples, were above a normal standard for turbidity.

Again, in 1955, the indications are that their process was brought under relatively tight control as indicated by the narrow spread in range and by the low average level

,Q. In your opinion, Dr. McClary, does this data show variations in the quality of beer "c" during the year 1954.

A. In my opinion it proves definitely that there was greater variation.

Hearing Examiner Hier: While we are on that point, will you look at beer "c"? The picture there is pretty sorry, too, isn't it?

The Witness: It is, yes, sir.

Hearing Examiner Hier: One other thing while I have already interrupted Mr. Baker. What these graphs, Exhibit 97, 98 and 99 show with reference to beer "e" during the year of 1954, does that equate commercially with what these witnesses testified to that the beer was green!

The Witness: In my opinion, yes, sir, definitely.

Hearing Examiner Hier: I mean greenness in the lay language is the same as what these exhibits show here!

The Witness: It definitely would be called that, yes. It is a difficult term to define, but if it is not had enough to be called real had they will say it is green. That is about (554)—the only way you can define it.

Bu Mr. Baker:

- Q. There is a definite correlation between turbidity and taste, is there not?
- A. I think that all technical people in the industry will agree to that.
 - Q. That is the whole burden of the Wallerstein studies?

A. Yes.

Hearing Examiner Hier: How much is taste a subjective matter and how much is it an objective measurement?

The Witness: Taste can, except under special conditions, in my opinion be measured as accurately or at least some aspect as accurately as many other scientific measurements, provided there is a standard to taste against.

Bu Mr. Baker:

- Q. Dr. McClary, how much significance do you attach to the variations shown as distinguished from any particular taste characteristic?
- A. I think we pointed out that a food product, if it is zoing to go by a brand, has to have something that distinguishes it, that people can recognize as being that. That builds up. I think, a taste preference for that. Because they get used to it. And once they do become accustomed to that by drinking it over a long period they will recognize that as being the product that to them is right.
- (555) Now, if that product is changing and the taste itself one time is one way and another time another way, I don't think they would hesitate to kick over that particular brand of beer. That is my opinion,
- Q. From a production standpoint. Dr. McClary, do variations have any effect upon the quality of the product turned out?

- A. The production of the beer in the brewery?
- Q. Let me withdraw the question. Let me re-frame it I think you testified earlier that there are certain compensations that can be made for air.
 - A. That is true.
- Q. Does a wide fluctuation in the production output as to air in different packages make that compensating any more difficult?
- A. It makes it very difficult. If the spread in the air is too wide it makes it impossible.

Hearing Examiner Hier: Where is the compensable limit?

The Witness: Well, I don't know. I haven't really set up experimental data on these competitive beers to find out where it would be on each one. So far as Budweiser is concerned, we hold a lower level, and our process demands it, because that is the way we get the best-in our opinion—the best product.

Hearing Examiner Hier: Suppose you run over that (556) 1.5, how far can you run over it and still compensate for it with other chemical measures?

The Witness: Some brewers are going up as high as four and five cc of air per bottle.

Hearing Examiner Hier: That is others—what about Budweiser?

The Witness: We compensate but hold the same taste we now have.

By Mr. Baker:

- Q. What is the compensating element—what does it do --does it affect clarity or taste?
 - A. Both to a certain extent, but clarity more than taste.

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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1959

No. 389

FEDERAL TRADE COMMISSION, PETITIONER

TB.

ANHEUSER-BUSCH, INC.

ON WRIT OF CERTICRARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 9, 1950
CERTIORARI GRANTED NOVEMBER 9, 1959
VOLUME II—Pages 13 to 972

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Mr. Baker: That finishes the direct examination. Hearing Examiner Hier: You may cross examine.

Mr. Mayer: May we have a few minutes to look over our notes. First of all, I am not able to cross examine this witness. This is my first indication that the doctor was going to be here either by name or in person.

Hearing Examiner Hier: We will give you five or six minutes, or do you want longer?

Mr. Mayer: That may be long enough to determine whether or not I will need further time to cross examine.

Hearing Examiner Hier: Very well. We will take a break for five or six minutes.

(A short recess was taken.)

(557) Hearing Examiner Hier: On the record.

Cross Examination by Mr. Mayer:

Q. When you talk about air being in a bottle of beer, Doctor, what do you mean by "air"?

A. Just plain air, like the air we breathe. Now it will have a slightly different composition. The oxygen-nitrogen ratio will be slightly different but it is the oxygen and the nitrogen gases that are confined within the package of beer.

- Q. Similar to the normal room temperature; air or any other, well, air just as it is commonly known?
 - A. Yes. That is correct.
- Q. And in extracting the carbon dioxide, you do not affect that at all?
 - 1. That is correct.
 - Q. In your analysis?
 - A. Yes.

Q. Doctor, what was the ratio of air which you said would affect the taste of the product?

A. In so far as Budweiser is concerned, it is 1.5 cc per 12 ounces of beer, or less, above that, depending, well, of course, it varies a little bit in resistance to oxidation. In other words, that isn't an absolute limit but shortly above that you will run into off taste on Budweiser.

Now as I said, I don't know what that limit is for other (558) beers because I know beers vary in their resistance depending on the process and what they do to it.

Q. In other words, then for any beer tested on your Exhibits 97, 98 and 99, you would be unable to conclude anything with regard to the taste of that particular beer?

A. I think it is safe to say, however, that some of the air levels reached would damage any beer that I have any knowledge of.

For example, I have never seen a beer that would not be damaged by more than ten ce of air in the bottle.

Q. Have you ever made a test of all of these brands of beers at more than 10 cc to determine if there was damage?

A. We have tested them when we knew they were high air as compared to normal air. Our turbidity, that always goes high when we have the excessive air, even as shown on that chart. There is a correlation between the turbidity shown and the air level shown. It is not perfect because these other factors, but where you do have a high air it is associated with the high turbidity that is very high air.

- Q. Is there any ever such a thing as a taste test run on any of these products?
 - A. There is.
 - Q. What is done with relation to Budweiser?
- A. You mean do we compare with Budweiser when we taste those?
- (559) Q. No, sir. Do you taste test the various bottles of Budweiser which you run through this particular test?
 - A. We do.
- Q. Do you have any analysis or summary of your taste test of these particular bottles of beer which were run through this test or these tests indicated on these exhibits?
- A. We have some on those, but being of a subjective nature and subject to judgment I haven't attempted to summarize them. It is a matter largely dependent there on judgment and we depend primarily in the routine testings on the turbidity to give us an index to the state of that beer rather than the taste test.
 - Q. Turbidity, giving you the appearance of the beer?
- A. Well, in our work and in Wallerstein's and in others, the relationship between turbidity and taste has been pointed out and is generally accepted in the brewing industry.

In other words, it is accepted that if you have a beer with a very high turbidity you are going to have off taste in it. That is an accepted situation.

- Q. That is an off taste for any particular beer?
- A. Yes. In other words, it won't taste like that beer did originally.

Q. Now, sir, if the variations of the air content, can they be specifically compensated for by, let's say, a batch beer of one particular volume manufacture of beer?

A. No, because the manufacturer has no way of knowing if (560) his operation is fluctuating in its air content, he won't be able to fluctuate for any given amount of air.

Now, if he has set up his operation so that he regularly runs two or three or four or five c.c. per bottle of air, then he can compensate all of his production in the same way.

- Q. Were there any compensating elements in any of these beers tested by you in preparation of the Exhibits 97, 98 and 99?
- A. I am not in a position to state what these brewers did. I haven't that information. I could only surmise from the relationship that I find between the air level and the turbidity that they were compensated for such a factor, and it is recognized in the industry that such a compensation can be and is made by members of the industry. That is common knowledge.
- Q. Did I understand you to say that there were definitely compensations made for this air content in the various beers that you tested in this particular, in the preparation of these particular exhibits?
- A. I am not, I can't testify as to any specific operation that any of these people made other than ours. I can form a judgment, perhaps, from the data as we see it, but I cannot testify that they compensated in one way or another except as I can conclude from the data that I have at hand. In other words, I have no knowledge of their operations, only the result of the tests that we have.

- (561) Q. Likewise you are unable to conclude with relation to the tastes of the various products which are analyzed on these particular exhibits. Is that correct, sir?
- A. I prefer not to go into that because of the subjective nature of the test, and it is subject to question. I would prefer to talk in terms of those objective tests there, that are recognized as being indicative of change in the quality of the product. That is turbidity.
- Q. And am I correct, Dr. McClary, in stating that in the analysis that you have made here in preparation of these exhibits that you were using only bottled beer?
 - A. That is correct.
 - Q. And when were these exhibits prepared, doctor.
 - A. Within the last two weeks.
- Q. Were they prepared for the immediate use in this proceeding?
 - A. They were.
- Q. Now, sir, is it your opinion that these particular exhibits show either a consistency, or a lack of consistency in the taste of the four products appearing thereon?
- A. If we accept the data that has been produced that tarbidity change, increasing turbidity is related to a change in taste, as shown by Wallerstein and others, then based on that evidence, it is my opinion that such a variation would exist.
- Q. In other words, a consumer moving from product "e", "d", or "e" would be moving from a product which is inconsistent (562) in its taste to another product, inconsistent in its taste according to these particular exhibits!
- A. Well, I think there that some of those beers shown, show a good deal closer consistency in their quality on aging than others do.

Q. And incidentally, is that only on aging that this particular exhibit would apply? For instance, would this apply the same to one week old beer as 16 weeks old beer?

A. In so far as the beer fresh from the brewery, you could only judge that by the taste. And I am not prepared to make any comments on that. However, one fact which has not been brought out insofar as knowing one beer was changed in its process, the coloring may change noticeably so it is just something that anyone could see.

Q. You mean-

A. With the change.

Q. Other than the turbidity that you have been discussing?

A. Yes. sir.

Q. What effect does chilling for a consistent length of time have upon the air content or the turbidity of the beer!

A. It has no effect on the air content. That is fixed. The chilling—Let me put it this way—the changes in beer that result in the development of a haze, go on faster at high temperatures, but the solid particles that result from that do not show up as a haze except in cool beer.

(563) You have chemical changes which at a high temperature will appear clear, but on cooling the solid particles are precipitated out. That is a common reaction in chemistry, something is more soluble in high temperature than it is at a low, but the significant changes in the beer have already gone on. We chill for a week at 30 degree to establish a common base level for measuring.

Q. Now your tolerance specifications of 1.5 cc that I take it is the result of your investigations, and an attempt at standardization of your particular product?

A. That is correct.

- Q. It is possible, well, for example, the other three products appearing on Respondent's Exhibits 97, 98 and 99, that the specification might well be 2 or 2.5 cc?
 - A. That is true.
 - Q. Or as high as 3 or 3.5 ce?
 - A. That is true.
- Q. In your opinion then, does a tolerance which is under that particular tolerance, let us say for beer "e" has a tolerance of let us say 5 cc, and is it your opinion then that anything below that, below 5, would not be reflected in the taste of the beer?
 - A. That is correct, if they are uniform.
 - Q. Anything with the five?
 - A. That is right, yes.
- (564) Q. Is it the lack of uniformity or the fact that the lack of uniformity is in excess of the tolerance specification?
- A. Well, it is the lack of uniformity beyond the acceptable limits that count.
- Q. Is there any way in which you can establish the tolerance specifications for the other three products appearing on Respondent's Exhibit 97, 98 and 99?
- A. Not from existing data. It would require further laboratory study specifically designed to pin down those points on the individual product.
- Q. To make an accurate comparison, though, would it not be necessary to know the tolerance specifications of the other three products before comparing them with the tolerance specifications in this case of Budweiser?
- A. I won't go along with that because I believe the turbidity results that we have point conclusively that the variation in quality did exist.

Q. But the variation is in excess, as I understand it. I am just asking for information, it is in excess of the tolerance specification which you have assumed for these three products?

A. Well, let me put it this way: They vary from what we will say was in early 1953 and then again at certain periods, in turbidity development and stability they would be acceptable for our standards but in much of this period of 1954, they went far above any standard that I know of in the brewing (565) industry for haze, acceptable haze limits. And the very widespread—and it does represent a very real widespread in quality as measured by this turbidity change.

Q. Would you care to check your original figures for me and give me in numbers the bottles of beers "e", that you tested, that would be unsatisfactory as far as haze is concerned, in numbers.

Mr. Baker: Will you read the question back?

The Witness: That will take a lot of checking through these books.

(Question read by reporter.)

The Witness: I would have to request an hour or two to do that job.

Hearing Examiner Hier: You can do that between now and 9:00 o'clock in the morning. It is time to adjourn.

Before you go, though, I want to ask you this question: If I understand what Mr. Mayer is driving at plus what you have been testifying to here, it is not so much the level at which the individual brewer fixes his air content, as it is the question of keeping that level constant. Is that correct?

The Witness: Provided he stays within a reasonable level which so far as I know in the industry nobody will accept as more than 5 cc.

Hearing Examiner Hier: That is what I am getting (566) at. Supposing beer "c" with its own formula is fixed at 3, because that is where the brewer of that particular beer wants to keep it uniform, wants to keep taste uniform, so that his customer will continue to expect and receive the same taste every time they buy a bottle of it, fixes it at 3.

The important factor, if I understand you correctly, is to keep it within very narrow ranges from 3, rather than to keep it down below 3. Is that correct?

The Witness: Yes. That would be correct.

However, in practice the standard can usually be set up at an upper limit and getting air to a lower level wouldn't hart it, in other words.

Hearing Examiner Hier: We will go on with this in the morning at 9:00 o'clock.

(Whereupon, at 4:30 p.m., the hearing in the above-entitled matter was recessed, to reconvene at 9:00 o'clock a.m., Tuesday, December 13, 1955.)

(567)

Tuesday, December 13, 1955

Met, pursuant to adjournment, at 9:00 a.m.

Before FRANK HIER, Hearing Examiner,

Appearances as before.

(568)

PROCEEDINGS

Hearing Examiner Hier: Are you ready? On the record.

Mr. Mayer: Yes, sir.

Hearing Examiner Hier: Doctor, get back on the stand.

DOCTOR J. E. McCLARY resumed the stand and testified further as follows:

Cross examination (Resumed) by Mr. Mayer:

- Q. Dr., directing your attention to Respondent's Exhibits 97, 98 and 99, in the conduct of the tests on the particular bottles and the particular products involved in the study in these exhibits, how many of those bottles were so cloudy on your first contact with them that you would notice it immediately?
 - · A. None of them.
 - Q. None of them!
 - A. Yes.
- Q. Now as I understand it, on Exhibit 98, these particular bottles were subjected to 100 degree heat for four consecutive weeks.
 - A. That is correct.
- Q. Had they not been subjected to that heat, is it possible that none of them would have clouded up?
- (569) A. In that period of time at a temperature, a storage temperature of 70 degrees or in that neighborhood, they would not have been that cloudy. The cloudiness would increase regularly and does depending on the tem-

perature, but the rate of the development of this cloudiness is a function of the temperature and as a rough rule we can say that the rate will double, approximately double, with each ten degree rise in temperature.

Hearing Examiner Hier: Then, Doctor, look at 98 and 99, and look at 9/13 on beer "c", September 13, on the two charts. One is 40.8 and the other is 37.4. The difference between those two then is not a measure of turbidity due solely to the extra 30 degrees heat reflected on 98 as against 99.

The Witness: What was the date on that, sir?

Hearing Examiner Hier: 9/13.

Mr. Mayer: That is 1954.

Mr. Barton: 9 13 in '54. I mean in 1954.

The Witness: The four weeks at 100 degrees was equivalent, or perhaps a little bit worse than three months at 70. There we see reflected a much higher rate of change at 100 degrees but the difference in time, bringing it up, because the change is progressive with time.

Hearing Examiner Hier: Can I take it then that the difference between 37.4 and 40.8 does reflect the extra (570) heat taking into consideration the length of time for the exposure.

The Witness: Very definitely.

Hearing Examiner Hier: Even though they are not the same bottle?

The Witness: That is correct.

Hearing Examiner Hier: They are out of the same case!

The Witness: They are out of the same case,

Hearing Examiner Hier: All right.

By Mr. Mayer:

- Q. And conversely, Doctor, the less amount of time-suppose in Respondent's Exhibit 99 it had been subjected to 70 degree heat for a period of only one month, then as I understand it, the turbidity would decrease?
 - A. It would be very much less, yes,
- Q. So that if the particular product, product "c" had been manufactured and sold within 30 to 60 days the turbidity would be considerably less than that which appears on Respondent's Exhibit 99.
 - A. That is true.
- Q. Now, Doctor, how do you tell the age of the product of any one of these brands, "c", "d", or "e" upon your acquiring it?
- A. Every brewer uses a code which is stamped on the case, (571) itself. Normally, the day of the year, beginning with January 1, is number 1, they are stamped consecutively on each succeeding day.
- Q. And that is the uniform code throughout the industry?
- A. There may be exceptions. There are certainly definite different codes on the labels. I would have to check our keys to say precisely but that is the system that is used in most breweries.

Hearing Examiner Hier: What does that date represent, the date it leaves the vat, the date it leaves the brewery or date of delivery?

The Wtiness: The day that the stuff runs through the bottling line.

By Mr. Mayer:

- Q. Now, sir, have you talked to any of the chemists or any of the analysts at the manufacturing facilities of any of these various brands, "c", "d" or "e"?
- A. Not specifically, no, sir. That is not normal in the industry to discuss those problems.
- Q. Do they maintain research facilities similar to those operated by Anheuser-Busch?
 - A. They do not, of that I am sure.

Hearing Examiner Hier: None of these three brands? The Witness: They do not.

By Mr. Mayer:

- (572) Q. Now, sir, in the testing of these particular brands, are at any time the labels removed so that the person making the test does not know whether the test is being made of Budweiser or any other brand?
- A. On these tests so far as I know the labels are not removed from the bottles.
 - Q. Then you would know that, wouldn't you, Doctor?
 - A. Yes.
- Q. As there were no labels removed each man conducting the test knew the brane' d at he was testing at the time?
 - A. If he wanted to know, yes.
 - Q. It was obviously that the label was on the bottle!
 - A. That is correct.

That is the primary reason that we use the objective test, where he takes his reading from a machine.

- Q. So that he wouldn't be affected by the label on the bottle?
 - A. Exactly.

Q. Now, sir, at what point with relation to Exhibit 99, with brand "e", at what precise point in any year, 1953, 1954 or 1955, will the taste of product "e" be affected by the ...mount of turbidity shown on this exhibit?

A. I am not sure I understand your question. Do you mean how long after we put it on the test?

- Q. No, sir, as I understand it, you have testified that (573) turbidity in beer does affect the taste of the beer.
 - A. That is correct.
- Q. Now I want to know when or how much of it, as displayed by this exhibit, at what point would any of these particular bottles or any of these particular lots, would the taste have been affected, by the amount of turbidity shown on this exhibit.

Hearing Examiner Hier: He wants to know whether 24 does it or 37 does it or 36 does it.

The Witness: In order to answer that question, I think I would probably nave to refer briefly to some very specific work that has been done on blindfold testing by taste. That is where the samples were coded, and we had tasters who had no way of knowing what sample he was examining.

We have consistently been able to tell a difference in beer by taste, before the turbidity become appreciable. When the turbidity reaches a level of 20, it is readily detected as tested against a fresh sample.

By Mr. Mayer:

Q. Is that in all brands or would that be limited to the particular brand manufactured by Anheuser-Busch?

A. That is in all brands which we have tested in the laboratory.

Hearing Examiner Hier: Then 20 is the limit?

(574) The Witness: I wouldn't say that. I qualified my statement by saying that tasting against a standard. It would be difficult for most people to pick up on the bar without any reference point, a sample at that point and say that it definitely is damaged. We are just not that acute in our tasting.

However, when it reaches a level of 30, it is my opinion that a beer drinker who is, well, familiar with beer would be able to detect it without a reference or anything else.

Hearing Examiner Hier: What is this change? Is it a change of bitterness or is it a change in flatness or what is the change that you speak of?

The Witness: The bitterness becomes more pronounced somewhat. But the primary difference is one that is more or less characteristic of beer as it ages that we term an oxidized flavor. It is difficult to describe, but it has an odor and tastes just like, very slightly spoiled food, very slight.

Hearing Examiner Hier: Yeast?

The Witness: It could be called a little yeasty.

By Mr. Mayer:

Q. Directing your attention to Respondent's Exhibit 99 in the conduct of that test, how many individual bottles of brand "c" did you find which tested above 30?

A. In the year 1953 for brand "e" there were none above (575) 39.

In 1954 six of 26 samples.

In 1955, none.

Q. I may have misunderstood the description, Doctor, as to the exhibit when it was given. Would you again, directing your attention now to Respondent's Exhibit 99,

in the left-hand column under brand "c" we see "date" and then number of samples.

Would you tell us what the figures opposite the entry "number of samples" means?

- A. That is the number of samples, of bottles in that particular sample.
 - Q. Those are individual bottles?
 - A. That is correct.
- Q. Now, sir, how many did you say in 1954 were in excess of 30?
- A. I can see your point there. It looks like there may have been an error. According to this chart there would be five.
- Q. Is the error contained in the chart or is the error in the transposition of your notes to this particular chart'
- A. That I would have to check. If you would like I can check it. It probably is in the notes which I referred to last night. All of one group, 9-13, were above the 30 mark which is one entire case. That is four bottles of that case, (576) and one as you will notice from the sample 3/11.
 - Q. Now, Doctor-
- A. Your original question, Mr. Counselor, was not how many above 30 but how many I would regard as being objectionable in turbidity and my figure was based on that and not on 30 precisely.
 - Q. The question this morning was in excess of 30.
- A. Then I would have to refer to the chart, or go back to my original figures to revise the figures that I put in here. You asked me what was in my opinion objectionable and my figures were based on that.
 - Q. How many was that, sir.

A. I picked, and going through the individual data last night, I picked six. I can easily see from the chart where that would be. If they crowd the line of 30 very closely—

Q. Now, sir, directing your attention to the date 3/11/54, is that a weighted average, the 27.5 or is that merely an average of the 30 and the 24.5?

A. There were four samples, sir, and that was an arithmetic average of the four samples.

Q. Is it possible that the other three were at 25, the other two, I am sorry?

A. It hardly seems likely since the 27.5 is considerably closer to 30 than it is to 24.5. The other two could not be at 25.

(577) Q. In other words, then, that is a weighted average, 27.5?

A. It is an arithmetic average.

Q. How did you arrive at the 27.5?

A. We added the values and divided by four.

Q. What leads you to believe then that there were more close to 30 than there were to 24.5?

A. Because 27.5 is three points above 24.5 and only 2 and one-half points under 30.

Q. I think I misunderstood you, you added the four turbidities for each and every individual bottle.

A. That is correct.

Q. And then divided by four?

A. That is correct.

Q. Now, sir, your testimony concerning the 30, and the conclusion as to whether or not the taste would be affected at the 30 point on this particular exhibit, would that be common to each product on this exhibit?

A. In my opinion, yes.

- Q. Now, Doctor, with regard to the brewing process itself, as I understand it, that would have little or no effect on the air content, is that correct?
- A. It could have an effect. As I pointed out yesterday, air, getting air in your beer can happen in the brewery, if you, for example, transfer beer from one tank to another and the second tank is full of air your pumping beer against a (578) tankful of air and that will rapidly pick up air.

Another point of entry is, as I said, at the bottling where you have to foam your beer to drive out the air above it. A high average air in your sample would indicate that the beer as it went through the bottle shop contained high level of air.

Where a significant number of the samples were low, but with a wide range you would expect the pick-up of air to be in the bottling line.

- Q. Can you tell us from examining Respondent's Exhibit 99 with regard to brand "e" where the air—how the air got into that particular product?
- A. On the turbidity, no, sir, I wouldn't be able to say even whether there was actually air there, from just examining the turbidity.
 - Q. How about 97?
- A. Let me put it this way: If I had such data on our line, I know what I would start looking to find the trouble, for getting air in the beer. I may be wrong. In other words, you can have a bottling machine that is so out of commission that you are picking up air in every bottle. It is unlikely, but it can happen.

But nevertheless, if I had a wide fluctuation such as we have there at 4/22, varying from .75 to 15 cc, I cer-

J. E. McClary, for Respondent-Cross

tainly would not, I would certainly look at the bottling line (579) because if you can get a single bottle as lew as .75 it was not in your beer when it went to the shop.

However, if I saw one such as 2/11 varying from 1.90 to 2.95, where that is not a very great spread, but even your lowest value is high, I would look at the beer itself to contain quite a lot of air when it got to the bottle shop.

Q. Doctor, prior to 1953, did you run systematic tests on your product and your competitive products for its air content and turbidity?

A. During the year 1952, the major part of our effort was devoted to the development of methods. We were running tests. We did not set up a systematic study such a this is. By a development of methods—I mean primarily that we didn't have at that time a method for measuring turbidity which was objective and satisfactory in my view. This work then or a routine basis started the latter part of 1952, after the method had been proved reliable and in line with our practical experience.

Q. Did you institute certain controls in the bottling process as a result of your studies in 1952?

A. We did, sir.

Q. Had this study been made of the Budweiser products in 1952, would it show a wider range of air content as well as turbidity?

A. I must confess that it did.

(580) Hearing Examiner Hier: I don't think that is clear in the record. You say "Had this study been made in 1952", which presupposes that it did not.

Mr. Mayer: I mean this particular exhibit. Had this

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exhibit been made to show what was happening in 1952, would it disclose that?

Hearing Examiner Hier: The answer was that it did vary more, is that right?

The Witness: That is correct.

By Mr. Mayer:

Q. Approximately how many different brands of beer have you tested since 1953 for air and turbidity?

A. I can only estimate on r routine basis, such as this, we could add four additional brands. On an irregular schedule studies, just periodic checking to get a broader coverage, perhaps we might set up a test that would run for only pick up three or four samples on consecutive months to get a picture, just a quick picture of approximate situation. I would estimate that we have a certain amount of information on some fifty brands.

Q. But these three appearing on Respondent's Exhibit 97, 98 and 99 are the only three that you test regularly and as a matter of course?

A. I mentioned there are four other brands that we do measure regularly,

(581) Q. What brand do you find has the lowest air content in running your tests?

A. Our own beer,

Q. What brand do you find has the best turbidity standing of all brands that you test?

A. Our own.

Q. Would that indicate to you that once a consumer, taste has been satisfied that it will not be changed because of a difference in taste in the product!

Mr. Baker: I don't understand the question.

J. E. McClary, for Respondent-Cress

Hearing Examiner Hier: The question is whether the Doctor understands it. Do you understand it?

The Witness: I am not quite sure.

Hearing Examiner Hier: All right, rephrase it.

Bu Mr. Mayer:

Q. The fact that your particular product that you have mentioned has the lowest air content and the best turbidity rating that you have tested, would that indicate to you that once the consumer's taste is initially satisfied that there is little likelihood of a loss of the consumer or the customer because of an inconsistency in the product.

Mr. Baker: I object to the question.

The Witness: I don't believe I am competent to answer that.

Mr. Baker: That is based upon an assumption that (582)—he would be initially satisfied.

Hearing Examiner Hier: This is an expert witness. I don't think it is too hypothetical. Do you understand the question?

The Witness: Yes, sir, I understand it.

Hearing Examiner Hier: All right, you may answer then.

The Witness: However, I don't believe I am competent to answer the question except in this: That as we pointed out in testimony, it is our opinion that one of the most important objectives that we have to aim for in the technical end of the business is uniformity. And I also pointed out that we believe there were preferable tastes.

Well certainly, we have other reason to put the emphasis on these things that we do. If it were not our

J. E. McClary, for Respondent-Cross

opinion that once the consumer became accustomed and appreciated that taste we think he will stay with it—that is our reason for doing this.

By Mr. Mayer:

- Q. Now, Doctor, with relation to Respondent's Exhibit 97, 98 and 99, am I correct in concluding that with regard to the four brands displayed thereon, that the Budweiser brand, am I correct in assuming that the Budweiser brand, therefore, is the most consistent in taste of the products appearing thereon for the years to which this exhibit is directed?
- (583) A. In so far as we are able to measure it. I would interpret this data that way, yes, sir.

Mr. Mayer: That is all we have, Mr. Examiner.

Hearing Examiner Hier: I would like to ask you this, Doctor: Will you look at brand "c" both for air and turbidity. It seems to me that the gyrations and variations and fluctuations, whatever you want to call them, of brand "d" are as bad or, if not worse, than brand "c". Do you so interpret it?

The Witness: I agree with you, except during the short period 1955 and 1954.

Hearing Examiner Hier: Yes, and it also occurs to me that brand "e" so far as rubidity goes, is more consistent with further variations than brand "f". I mean graphically that is what this presents to me. Is that correct or do you so interpret it? I am not talking about air. I am talking about turbidity.

The Witness: I understand. The data is not entirely consistent between the two points and I am afraid that more samples would have to be analyzed to pin it down

J. E. McClary, for Respondent-Cross

any closer. We have statistical evidence here that would indicate that in one case "f" is superior and in the other test "e" is slightly superior. I don't believe that the difference between the two in turbidity is marked or very significant.

(584) Hearing Examiner Hier: Any more redirect! Before you start on this, another semi-bright idea occurs to me. Following up that question that I asked you about brand "d" showing more gyrations than brand "e", you were in the room yesterday and heard the testimony about switching.

The Witness: Yes, sir.

Hearing Examiner Hier: How could that be?

The Witness: It seems to me, however, that when anyone mentioned a marked increase in their sales they referred to brand "e".

Hearing Examiner Hier: I agree with that, but there was some switching over to brand "d", at least a couple of these fellows so testified that either one or the other, most of them said, were brand "d", obviously under less control than brand "c" and brand "c" discussing or knowing the taste of the consumer, why would they go and say in some instances with a brand which showed more variations?

I know you are not a commercial man and all of that, but I want to get it from the chemical side.

The Witness: Weil, I don't think there is any real explanation for it. Brand "d" is a local product. It has been favored in many of those markets for many years. And the local product, the bulk of which will be consumed relatively fresh.

Hearing Examiner Hier: On that point, if I recall (585) this record correctly from the past, brand "e"

is possibly being a local product, there is a brewery in St. Louis of that brand.

. The Witness: That is correct.

Hearing Examiner Hier: Whether or not the deliveries are made from that brewery or not is a question. I assume they would be.

All right, Mr. Baker, you may proceed.

If you have any clean-up questions, all right.

Redirect Examination by Mr. Baker:

Q. Doctor, will you refer, please, to RX 99, beer "c", the test dated 9 13 in 1954. Mr. Mayer asked you on cross-examination if that beer were from 30 to 60 days old the turbidity would be much less.

The question that I want to ask you is this: That would be assuming the conditions of the test that that beer had been held at 70 degrees for one week?

A: That is true.

Q. In other words, at the same temperature?

A. That is true, The evidence on RX 98 shows that if it had been at a higher temperature, 100 degrees for four weeks, it was even worse than that shown on 99.

Q. Late yesterday afternoon Mr. Mayer asked you to pick out the number of beers which you considered objectionable (586) so far as turbidity is concerned on RX 98, 99.

This morning he asked you for only one of them, and I believe that was RX 99 for beer "e", in 1954.

Looking at RX 99, on beer "d" for the year 1953, and 1954, will you give me the respective figures for each year?

A. Beer "d", 1953, 21 of 38 I would consider objectionable.

- Q. 1954?
- A. In 1954, 21 of 34.
- Q. And in 1955?
- A. None.
- Q. Now turning to RX 98, beer "c" for the year 1953,
- A. Two of 45.
- Q. And for 1954?
- A. Eight of 35.
- Q. Now going to beer "d" for the year 1953?
- A. 35 of 44.
- Q. And beer "d" for the year 1954?
- A. 20 of 30.
- Q. Dr. McClary, with reference to this deviation, that is the number which you would consider objectionable from the norm, have you prepared a table giving that information?
- A. The deviation from the average of prepared, yes. Hearing Examiner Hier: That will be Exhibit No. 100, Respondent's Exhibit.

(The paper referred to was marked Respondent's (587) Exhibit 100 for identification.)

By Mr. Baker:

Q. Referring to Respondent's Exhibit 100 for identification, will you please explain what this shows in code?

A. For beer "c" in 1953, for air level, in 1953, beer "c" had an average air level of 1.140, c.c. per package, with a standard deviation of .775.

In 1954, the average air content per package was 2.133, with a standard deviation of 2.387.

And for 1955, the air level was 1.860, with the standard deviation of .761.

Hearing Examiner Hier: What do you mean by standard deviation?

The Witness: That is the average.

Hearing Examiner Hier: The average deviation, isn't it an average of deviation?

The Witness: No, sir. It is a statistical formula. It is not really an average but it is and can be interpreted as the average scatter around the average point.

Hearing Examiner Hier: The word standard throws me.

The Witness: That is a standard formula that is used in a statistical analysis.

Hearing Examiner Hier: Go ahead.

By Mr. Baker:

(588) Q. Is that taking enumerable samples, you would expect that scatter, is that correct?

A. That is correct.

For beer "d", we have an average for 1953 of 2.348, and standard deviation of .795.

1954, 2.456, with an average 1.135.

For 1955, beer "d" 1.929, with .348 standard deviation.

For all practical purposes, these average and deviations show exactly the same and confirm what is shown visibly on the charts.

Q. That is referring to Respondent's Exhibits 97, 98 and 99?

A. That is. This simply furnishes for the statistical record a proof that that trend and scatter actually exists.

Mr. Baker: We offer Respondent's Exhibit 100.

Mr. Mayer: We have no objection.

Hearing Examiner Hier: All right. Admitted.

Mr. Baker: On the same basis.

Hearing Examiner Hier: Respondent's Exhibit 100 is admitted in the record with instructions to the Division of Legal Record that the Exhibit be sealed.

(The paper referred to, heretofore marked for identification Respondent's Exhibit 100, was received in evidence.)

Hearing Examiner Hier: Under the same circumstances (589) and conditions as that attached to Respondent's Exhibits 97, 98 and 99.

Mr. Baker: That is all we have with this witness. Recross?

Mr. Mayer: We have no further questions of the doctor at this time. I would like to reserve any right to recall him, however, upon subjecting this to analysis by experts in his particular field.

I'd also like to comment on the severity of this document. In my opinion to adequately test this it would be necessary to show these documents to the concerns involved.

Hearing Examiner Hier: There is no point in scaling them, then.

Mr. Mayer: I can show them one at a time. The one product involved on it at a time, rather than showing any competitor any information with regard to any other competitor on it. I feel that would be necessary and must be done, to protect the public interest here.

Hearing Examiner Hier: Just how would you show—you mean slice this thing off here?

Mr. Mayer: Yes, sir, make a copy of it, an exact copy of the form with regard to brand "e" and thus discussing it with them use that.

I think it is only fair to have this tested by the experts at each and every one.

(590) Hearing Examiner Hier: Let us go off the record.

(Discussion off the record.)

Hearing Examiner Hier: On the record.

All right, Doctor, you are excused for the time being. (Witness excused.)

Mr. Mayer: If we could have just a minute, I would like to depart for a minute and talk to another examiner about a hearing that I am trying to get postponed.

Hearing Examiner Hier: We will take a five minute break.

(A short recess was taken.)

Hearing Examiner Hier: On the record.

MELVILLE R. GARNER was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Baker:

- Q. Mr. Garner, are you presently employed by Ambeuser-Busch?
- A. No. I retired about August 1st from Anheuser-Busch.
 - Q. This past year, 1955?
 - A. Yes, sir.
- Q. Prior to your retirement, Mr. Garner, what was your position with Anheuser-Busch?
 - (591) A. Food Store Sales Manager.

- Q. And how long had you held that position?
- A. Well, that position was established, I think, about July 1951.
- Q. Prior to that time, what had been your duties with Anheuser-Busch?
- A. Well, my duties had been in charge of the activities of developing food store sales without any real title, and in addition to that, during certain periods there I was District Manager in various areas.
- Q. When did you first undertake duties for the company of promoting sales to grocery stores?
- A. In October 1938, I was hired for this specific purpose of developing food store sales.

Hearing Examiner Hier: That raises a question in my mind. What was your background? You were hired for that specific purpose. You must have had some experience in that line. Did you?

The Witness: Yes, sir, I did. My experience in that line was as a merchandiser, buyer, and salesmanager with Sears Roebuck and Company, for eleven years, during which time I accumulated a great deal of experience along that line.

By Mr. Baker:

- Q. Would you please, Mr. Garner, state the position of Anhenser-Busch with respect to recognizing the importance of (592) the grocery store channel in attempting to develop sales through that channel?
- A. Well, I believe Anheuser-Busch was the first, in fact I know, or rather so far as I know. Anheuser-Busch was the first brewery that had a complete national cam-

paign because I developed this campaign shortly after I came with the brewery, or rather outlined it.

Mr. Baker: I'd like to have marked for identification as Respondent's Exhibit 101, 102 and 103, letters of Mr. Garner's.

Hearing Examiner Hier: The first letter is from whom! Mr. Baker: The first one, number 101 is from Parsons, dated September 19, 1955.

The second is from Harold P. Echternach, dated July 13, 1955.

And RX 103, from L. W. Gabbel, July 21, 1955. Hearing Examiner Hier: So marked.

(The letters referred to were marked Respondent's Exhibits 101, 102 and 103 for identification.)

By Mr. Baker:

Q. I show you these exhibits and ask you if they are true copies of letters which you received upon your retirement from the company?

A. Yes, sir, they are.

(593) Mr. Baker: I offer them.

Mr. Mayer: I certainly don't see any relevance to the documents which we have just marked and identified. Frankly, I wonder what the purpose of the offer is.

Hearing Examiner Hier: I don't, either, Mr. Baker. We can assume for the purposes of this record that the witness did a bang-up job or he wouldn't have been kept there.

Mr. Baker: They primarily go, Your Honor, to the efforts which Anheuser-Busch as a company made over a

long period of time, in the grocery store channel distribution.

Hearing Examiner Hier: I see. I understand that is your purpose, but I don't see anything in these letters that would give any details on that point.

Mr. Baker: The detail will come.

We won't press the offer.

Hearing Examiner Hier: I won't accept them at the moment. We will see what develops here.

Ba Mr. Baker:

Q. Mr. Garner, you testified that you were employed specifically for the purpose of developing sales through food stores, in 1938. Will you tell us, please, in general the program followed under your supervision to this end?

A. Well, there were several main points. Number one was to sell grocers who didn't have a beer ficense on the idea of buying a license and putting in a beer department and handling (594) Budweiser and other beers.

And the next one would be to sell a grocer who had a license and handled other beer but did not handle Bud weiser to put in Budweiser.

The next point would be to sell a grocer who had a license and was handling beer, including Budweiser, but whose sales were not as good as they should be on doing a better merchandising and selling job.

And then, in addition to that, of course, we did a lot of work in contacting the various state associations over the country and also State ABC Boards and other authorities of that type in connection with our activities.

Mr. Baker: I would like to have marked for identification Respondent's Exhibit 104, a five page document signed

by Mr. Garner, dated January 18, 1940, entitled "Answer to Grocery Store Centests."

Hearing Examiner Hier: Very well.

(The paper referred to was marked Respondent's Exhibit 104 for identification.)

By Mr. Baker:

- Q. I show you Respondent's Exhibit 104 for identification and ask you if you prepared this document?
 - A. Yes, sir, I did.
- Q. Would you tell me, please, what the purpose of the document was?
- (595) A. Well, this document is arranged in question and answer form, and it really includes the majority of the points which were the basis for training our sales organization, including our wholesalers and branches on developing more Budweiser sales in food stores.
 - Q. It is in the nature of a training?
- Λ . Training, this is the basis for a training, complete training program.

Mr. Baker: I offer Respondent's Exhibit 104.

Mr. Mayer: Mr. Examiner, I fail to see the relevance of this document, either. I think we are willing to concede if Anheuser-Busch is an aggressive merchandiser of its products. I don't think this adds anything. I don't see to what particular event this can possibly be related.

Hearing Examiner Hier: That is what is worrying me-

Mr. Baker: This record is replete with evidence of two channels of distribution for beer. They are entirely different channels. They are different channels from the merchandising standpoint and from a price standpoint. We think that we have the right to go into this one chan-

nel and show what the factors, economic and otherwise, are, and the problems that Anheuser-Busch faces in that channel of distribution. We think it relevant to meeting competition defense. We think it is relevant to the changing market (596) conditions.

Hearing Examiner Hier: It escapes me. I don't see how it—I will assume—I assume it anyhow, Budweiser has pushed retail store sales, off premise sales or whatever you want to call it, grocery store sales to the limit.

The record shows that there has been quite a change in beer distribution over the period of years. When I was a boy it was draft beer. About the only time you got beer in bottles was when the old man had it delivered to the front door. Not the six horses, just two of them.

This picture has changed. The record shows it. Supposing you have done a bang-up job in pushing beer through grocery stores, how is that in defense to this?

Mr. Baker: I think the record will show before we get done we have not done a bang-up job in pushing beer in grocery stores.

Hearing Examiner Hier: Even so, how is that a defense to this price thing?

Mr. Baker: We have the two channels of distribution. I don't see how we can possibly lay a basis, the ground work for that defense, without showing what the situation is within the channel of distribution.

Hearing Examiner Hier: What you are telling me is that these three competitors in the St. Louis area were doing a better job in the grocery store than you were and that is (597) reason you conducted this price experiment, is that it?

Mr. Baker: That is one facet.

This is a small amount of material that I want to put through Mr. Garner showing what Anheuser-Busch attempted to do in that field. We will follow later with more specific detailed information.

Hearing Examiner Hier: This material does not touch on it. I understand that.

Mr. Baker: Granted—we have to start. We can't start and jump into the thing in the middle. It seems to be that we have to show what the considerations are in that channel of distribution, in order to lay a ground work for meeting the competition detense in that area.

Hearing Examiner Hier. Do you agree with me that through meeting the competition in defense will of necessity have to be confined to St. Louis and St. Louis County?

Mr. Baker: No, we do not.

Hearing Examiner Hier: Do you mean to tell me that if you are meeting competition in Washington—you have competition in Washington here from Schlitz and Pabst, and so forth and so on, in the Safeway Stores and so on here, that that is a defense to this price drop in St. Louis County?

What becomes of your localized?

Mr. Baker: Of course, in our view there are a sounder of answers to the objection that Your Honor raises.

(598) Hearing Examiner Hier: It really isn't an objection on my part. It is a question.

Mr. Baker: Yes. What we would like to suggest is that we be allowed to proceed with this, and move into our defense, subject to a motion to strike this evidence.

We think that we can't jump into it in the middle. We have got to build up a 'ogical picture here.

You can't do it by starting at the back end.

Hearing Examiner Hier: Well, I usually allow that when the terminal point is not too clear but it seems to me here that the terminal point is fairly clear. I don't see how the competition that you have around the country for grocery store business can be used as a defense to an area price drop in one county.

Mr. Baker: Let me say this, Your Honor: We are in competition over a broad area. I see nothing in the meeting competition defense which precludes us from starting some place.

Hearing Examiner Hier: You are familiar with the Niehoff case recently decided. That point was squarely raised in that case. It is on appeal in the 7th Circuit now. They raised the question in a factual posture, that was damaging as anything could be from the Respondent's standpoint.

They had 32 products. They had competitors. They took the flat position, "We cannot meet competition individually (599) locally and specifically. It can't be done."

And I agreed with them. The Staley case makes no such exception and the Commission sustained that case.

Mr. Baker: I think the Niehoff case is quite a different factual situation than this case, Your Henor.

Mr. Mayer: It is, frankly, more awesome when you consider that the Niehoff case was a secondary case and this is strictly area products.

Hearing Examiner Hier: That is right.

Why is it you can't make a suitable and detailed proffer in this record on this point. I am not inclined to let this evidence in and then strike it. It takes up a lot of time and effort on your part as well as ours.

Mr. Baker: Your Honor, assuming that we could prove in this case that for 15 years Anheuśer-Busch has made every effort to break into the food store distribution channels, the super markets, etc., and that after that 15 years we have infinitesimal standing in that channel of distribution, especially the super markets, the food store, that for example, in New York City we are doing less than one percent of the business through food stores, yet our overall national share of the total market is something in the neighborhood of something like seven percent—your Honor has stated that you would not freeze this company with any fixed differential.

Hearing Examiner Hier: I didn't say I wouldn't (600) I don't see how it could be done.

I don't think it should be done, as a matter of fact, but then I am not closed on this subject yet.

Mr. Baker: How can we show the necessity of not freezing without painting a full picture on what the practical commercial sales problems are in that channel of distribution. I think that nothing does it more draum tically than the figures that I just cited to Your Honor.

ilearing Examiner Hier: I would think that he would concede, that Government counsel would concede that without the necessity of putting witnesses on the stand—that you have for 15 years made an intelligent, vigorous, agreesive and perhaps expensive effort to build up your off premise grocery store or other dispensary as distinguished from a saloon or something of that sort type of business and I don't think he would contest, although he probably would not concede, the figures that you put in.

I will let you put those in but I don't see the necessity of going through into all of these sales afforts and training program and all of that sort of thing.

Are you willing to so concede?

Mr. Mayer: Yes, sir, with the exception of the figures themselves.

Hearing Examiner Hier: Yes, sir.

I don't think there is any doubt about that.

(601) Mr. Baker: I wanted to make sure I understand the stipulation.

Hearing Examiner Hier: All right. You state it and see if he agrees with it.

State it as broadly as you please.

Speaking of efforts now and not results, you have to prove the results. He won't stipulate as to those

Mr. Baker: As I understand the stipulation, it is this, that since 1938, Anhenser-Busch has made a determined and vigorous effort to get into the food store channel distribution at great expense. That as of today their share of the market is far from commensurate with the effort that they have put into it; that their sales results are far, far below their national average of sales to total sales.

Mr. Mayer: We will stipulate concerning the effortmade by Budweiser to merchandise its product in this field. The results of those efforts I think he should develop asa matter of fact from the witness,

Mr. Baker: We will develop the specific evidence, what the results have been.

Hearing Examiner Hier: All right. Now, Mr. Smith, I want to make it clear on this record that the only reason I am taking this testimony is not because I think it is germane to a defense of meeting competition in good faith to an area price discrimination in St. Louis and St. Louis County, I am taking (602) it mainly for the pur-

pose of having a background onto which this possible order can be evaluated.

In other words, if counsel for the Government is going to contend for an order which establishes or fixes or freezes a given differential not uniform but a given differential around the various areas in the country, then I think this evidence is probably germane on that point.

I don't think that, as I said before, it is a defense to show meeting competition in New York, Minneapolis, San Francisco or some other point, where you have a primary line injury case with the price experiment as you call it, localized in one county.

Mr. Baker: We would like to ask your Honor to reserve decision finally on that point.

Hearing Examiner Hier: That is my tentative view at the moment. But I am making it clear that I would not take this evidence except on that point. It may be as this thing develops and goes along I may change my point of view. I don't know what your facts are. But from what you have stated they don't impress me very much at the moment.

3 'Mr. Barton: If Your Honor please, I might state first at the conclusion of the motion to dismiss, and when Your Honor rules—there was a statement—that we were going to be permitted to go into the field, in other words—

Hearing Examiner Hier: Yes.

(603) Mr. Barton: —to explain this marketing situation rather broadly.

Now, the basic fact of the market is that the distribution of beer over the years has been changing from the tavern to the grocery store; that the position of Anheuser-Busch as a national brewery has been in the tavern rather

than in the grocery store; that that process of change is posing a problem for the continued Anheuser-Busch program of sales; that the popular priced brands such as Falstaff have in a short number of years grown rapidly and at the expense in many areas of Anheuser-Busch sales in those areas; that this matter of distribution through grocery stores is an integral part of the full clucidation of that problem; and that, therefore, the evidence on this point is basic to the meeting competition defense.

If Your Honor please, there are very few exhibits on this point and if they could be marked for identificatio, so they are available, I think it would be a desirable thing.

Hearing Examiner Hier: You can mark anything. Mr. Mayer, you do not contest these first postulates, the first three statements, do you?

Mr. Mayer: At this time, no, sir. It is already in this record. It has been testified to.

Hearing Examiner Hier: The first three statements he made?

(604) Mr. Mayer: It is in the record.

Hearing Examiner Hier: All right, put them up here and let us get them marked then.

Mr. Baker: I have them marked.

Hearing Examiner Hier: You already have them marked?

Mr. Baker: Yes.

Hearing Examiner Hier: Respondent's Exhibit 10%, is a two page presentation entitled "Complete General Outline of Distributors Activities in Connection With Greery Campaign."

No. 106, is a seven page document entitled "Sales Presentation to Grocer to Get Him To Buy License."

Exhibit 108 is a 46 page brochure, printed by the respondent, entitled "Written By Grocers For Grocers."

No. 107 is a 23 page brochure, printed by the Respondent, entitled "Grocers Profits are Too Low."

No. 109 is a for" page printed document entitled "Anheuser-Busch, Inc., Development of Grocery Store Outlets."

No. 110 is a brochure of the Respondent entitled "Where Did they Buy the Beer?"

Since this is unpaged, the reporter will page it with a numbering machine.

No. 111 is a two page letter from the Hearst Advertising Service, to the witness, Garner, dated November 15, 1951.

(605) No. 112 is an eight page reprint, entitled "Sales Presentation to Grocer to Sell him on Setting Up a Display or Putting in Budweiser."

Mr. Baker: Your Honor, all of the exhibits which you have just identified in the record, with the exception of the last, No. 112, I wish to offer at this time. I am not offering 112, the Exhibit 194 through 110 consist of promotional material of one type or another prepared by the witness Garner.

No. 111 is a letter which confirms some of the factual data in Respondent's Exhibit 110. I offer those exhibits.

Mr. Mayer: We have the same objection, Mr. Examiner, that we raised to Respondent's Exhibit 104.

Hearing Examiner Hier: It has been stipulated that Anheuser-Busch has gone to all of this trouble and effort. I don't see the point in these exhibits. This record will be pretty cumbersome before we get through with it. I am going to hold up ruling on them and see how we get along, see what you develop.

By Mr. Baker:

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Q. It has been now stipulated, Mr. Garner, between counsel for the Government and counsel for Anneuser-Busch, that Anneuser-Busch made intensive efforts to get into the food store channel of distribution with their Budweiser beer beginning at a very early date.

(606) Will you tell us generally what success from a sales standpoint Anheuser-Busch has experienced in their

beer sales through grocery stores?

A. Well, much to our regret I don't think that Anheuser-Busch got sales results comparable to competing local breweries commensurate with the amount of time and

money we spent.

For instance, we had distribution in a lot of food stores. We had good stock of merchandise in the stores. We used the last few years a series of special related items displays, displaying Budweiser and related food items and we did all of the things that are commonly done by a saleorganization, or that we knew how to do.

But we just did not get the sales. For instance, in New York City, I know it was fairly common there to find stores only selling two or three cases of Budweiser and they had been selling 40 or 50 cases of Rheingold or some of the other beers.

Q. To what do you attribute the poor showing of An heuser-Busch in grocery store channels?

A. Price was the most important thing. The customers, in supermarkets and food stores generally, but particularly in supermarkets, they have a lot of lady shoppers and ladies are very price conscious and they go in there and if they find one item is a little higher than the other, if they have a reasonable faith in the lower priced item

they will buy the lower priced item; so that is a very important factor.

- (607) Q. I show you Respondent's Exhibit 112 for identification and I ask you if you prepared that?
 - A. Yes, I did.
 - Q. When did you prepare that, approximately?
 - A. I think it was prepared about 1950.
 - Q. What was the purpose of this document?
- A. That is a story that the salesman tells to the grocer in making the sale. That document was prepared to train salesmen in our sales organization.
 - Q. In what form is it set up?
- A. It is a question and answer form. In other words, grocers objections to putting in Budweiser and our answers to those objections.
- Q. Looking at this document, Mr. Garner, how many pages are there in it?
 - A. Eight.

Hearing Examiner Hier: I think there are eight.

By Mr. Baker:

- Q. Turning to pages four, five, six and seven, will you tell me what objections raised by the grocer you attempted to answer on those pages.
- A. Price, high price of Budweiser as compared to the local beers.
 - Q. And these were the answers to those objections?
 - A. We gave our salesmen to use.
 - (60s) Mr. Baker: I offer 112.

Mr. Mayer: I think this is in the same category as 104.

Hearing Examiner Hier: I am going to hold it up for the moment. Go ahead.

Mr. Baker: You are delaying ruling?

Hearing Examiner Hier: Yes, I want to see where this thing is going.

Most of this material I think has been stipulated. This perhaps has not. But the rest of it has.

Mr. Baker: That is all we have of this witness.

Hearing Examiner Hier: Mr. Mayer.

Cross-examination by Mr. Mayer:

- Q. Mr. Garner, the trouble in New York City between -you said Budweiser efforts were not too successful was because of price.
 - A. That was one of the factors, yes, sir.
- Q. Was Budweiser selling at a price higher than the price of the local beers in New York City!
 - A. Yes.
- Q. And is that pretty generally true in the grocery outlets with which you are familiar?
 - A. Yes, it is.

Mr. Mayer: That is all we have.

(609) Hearing Examiner Hier: Wait a minute. I am far from satisfied. If you boys are not going to ask it, I will ask it.

What is the difference, what is the greater price?

The Witness: You can't say there is a fixed differential.

Hearing Examiner Hier: I understand that but I mean, he is talking about New York City—what is it in New York City?

The Witness: As I recall it, I think Budweiser was selling at 18 cents, two for 35 cents, and the local beer probably maybe 15 cents, something like that.

Hearing Examiner Hier: Tell me this: Is Budweiser the same or very close to the same price as the other so-called national beers such as Millers and Pabst and Schlitz, Blatz, that is all I can think of at the moment?

The Witness: Normally the Budweiser price was, Occasionally we ran into slight variations there but normally the Budweiser was the same as Schitz, Pabst, etc.

Hearing Examiner Hier: When you say that your results from grocery store food outlets were not commensurate with your efforts, of course that is necessarily a subjective judgment. Is that your judgment, or Mr. Busch's judgment or the Board of Directors judgment, or is there any standard or any line upon which we can throw it, one against the other? (610) I mean, for a comparison basis. I want to know who made that judgment.

Mr. Baker: May I break in there to say this?

Hearing Examiner Hier: Sure.

Mr. Baker: We are going to have the most specific type of statistical data on that very point that Your Honor is raising now.

Hearing Examiner Hier: I don't see how statistics can answer that questioning. He expresses the opinion here that they were not commensurate. I want to know what the basis of that opinion is, if it is in addition to these statistics. That man won't be here when you get the statistics in the record. That is the trouble.

But tell me, what is the basis of that statement?

The Witness: Well, my idea was that we did or tried to do a more detailed and complete job in food stores than many of our local competitors over the country. As a matter of fact, we had a good store organization functioning.

Hearing Examiner Hier: What it boils down to then is this, Mr. Garner, what you are disappointed in is that you spent more time, money, and effort than the local beers have commensurate with the amount of sales you had as against the local beers. You expected to do a great deal more business than you have actually done for the contribution.

The Witness: Yes, Perhaps if I could make (611) another point there and that is this: It just did not seem to me that we had been able to do a good enough job of having these people who are price conscious go into a food store and pick out Budweiser in preference to some of the other beers in sufficient quantities.

In other words, we would have a very expensive display piece that we would put up in a store, and that piece might cost—we used them in quantities of a thousand—and it would cost maybe \$5 or \$6 or \$7, just the cost of the display only, but in addition to that, the man had to sell the grocer on letting him put it up, and then he had to go in and put it up and, of course, he put up a lot of other merchandise with it. So it was fairly costly.

It did not seem to me, or rather—let us put it this way—I was not able to sell our company that we were getting sufficient results from the type of expenditure we had.

Hearing Examiner Hier: You put up this expensive point of sale advertising, and half a dozen customers would buy six cans a piece when some local beer on the back shelf had not spent a dime on advertising would walk out of there with 25 or 30. Is that it?

The Witness: That is the point.

Hearing Examiner Hier: You say that was due, in your opinion, largely due to the price!

(612) The Witner: There were other factors, too, but price is an important factor.

Hearing Examiner Hier: What were the other factors? The Witness: I think advertising is a highly important factor. In other words, consumer acceptance. In all of these areas, these local breweries built consumer acceptance by using all of the known consumer advertising media.

For instance, Rheingold in New York spend, I don't know, but I would imagine millions in using a lot of media to sell the consumers there. It was just our general understanding, we could not possibly hope to meet expenditures of that kind.

Hearing Examiner Hier: Is there a single chain in the country having more than 25 units in which Budweiser is not presently sold?

The Witness: Yes, there are. But those chains are not licensed, we will say.

Hearing Examiner Hier: I see.

The Witness: In other words, we made the point that we do have distribution. I don't believe there is a chain having more than 25 units, I mean that is just an off-hand estimate. I would not want to make that as an exact statement.

(613) Hearing Examiner Hier: If I understand it correctly, this campaign of yours resulted in sufficiently wide distribution?

The Witness: We got distribution.

Hearing Examiner Hier: But the volume was unsatisfactory?

The Witness: That is right. We just could not get the sales result.

Hearing Examiner Hier: Well now, one other question that I suppose both counsel are going to get upset about. Neither one has asked it.

Is there any place in this country in these food outlers to your knowledge at the time you left—you retired from your present position?

The Witness: Yes.

Hearing Examiner Hier: —where Budweiser was selling at the same price as the local beer, the same price to the consumer?

The Witness: Yes-well, let me think, and then let me also think again as to what you call local beer.

In other words, in some areas these so-called local beers varied in prices.

Hearing Examiner Hier: All right. I will put it this way, any beer except Schlitz, Pabst, Millers, Blatz, any except those?

(613a) The Witness: Those are nationally known beers. I don't recall any place right off-hand. You are talking about in licensed food stores?

Hearing Examiner Hier: Yes, I am talking about food stores. I am not talking about taverns and I am not talking about package stores. I am talking about food stores, these outlets that you had supervision over.

The Witness: Yes. Right off-hand I don't recall it but that still does not mean—I mean, I obviously could not be in touch with prices.

Hearing Examiner Hier: I understand.

The Witness: In all of these areas.

Hearing Examiner Hier: Did 1-open up a Pandora's box for either one of you?

Mr. Barton: No, we will have the facts on that whole question by very extensive surveys, so that I think that question will be sufficiently illuminated.

Hearing Examiner Hier: All right. Anything more from Government Counsel?

Mr. Mayer: No.

Hearing Examiner Hier: You are excused. Thank you very much.

(Witness excused.)

Mr. Baker: Can we take a five minute recess?

Hearing Examiner Hier: Yes.

(A short recess was taken.)

(614) Hearing Examiner Hier: All right, gentlemen.

Mr. Baker: Mr. Zimmermant please,

MAX M. ZIMMERMAN was thereupon called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

Direct Examination:

Hearing Examiner Hier: What is your first name? The Witness: Max M. Zimmerman.

By Mr. Baker:

- Q. Mr. Zimmerman, what is your home address, please!
- A. 88 Central Park West, New York City.
- Q. What is your business address?
- A. 67 West 44th Street, New York City.

Q. What is your business?

A. I am the editor and publisher of Super Market Merchandising, a trade publication in the food business.

Q. Mr. Zimmerman, at my request did you furnish me with a biographical sketch of your background?

A. I did, yes.

Mr. Baker: Your Honor, we are offering this man as an expert in the super market distribution field, and I have here prepared a biographical sketch. It might save time if we gave counsel a copy and submitted one for the record, for insertion in the record.

Hearing Examiner Hier: Copy this in the record at (615) this point, Mr. Reporter, as the witness' qualifications and background.

(The biographical sketch referred to follows:)

Biographical

M. M. Zimmerman, Editor and Publisher of Super Market Merchandising, and founder and honorary life member of Super Market Institute, is a graduate of Yale University—Class of 1911. In 1914, as a member of the Editorial Staff of Printers' Ink, Mr. Zimmerman made the first exhaustive analysis of chain store distribution which resulted in a series of fourteen articles in Printers' Ink. In these articles, the first offered to the food world on the growth of this new system of retail distribution, Mr. Zimmerman charted his idea of the future growth of the chain store.

Again in 1930, Mr. Zimmerman was commissioned by Printers' Ink to make another study of the chain store situation which resulted in twenty-five articles, bringing the chain store situation up to date. These studies were pub-

lished in a volume, The Challenge of Chain Store Distribution, published in 1931 by Harper's.

In 1932, when the first Super Market in the East made its appearance, Mr. Zimmerman turned his attention to this new development and made the first study on the subject for Printers' Ink. The result appeared in a series of articles in Printers' Ink and were followed by a book called Super Market—Spectacular (616) Exponent of Mass Distribution, published in 1937.

Following the war, food distributors of Europe's reviving economy from Sweden, France, Holland, Belgium, Switzerland and Italy visited Mr. Zimmerman, asking him to assist them in outlining the possibility of applying the Super Market and self-service techniques of America to their new post-war development. To this end he visited these countries in 1947 and 1948 entirely on a voluntary basis and gave lectures and addressed conferences before gatherings such as the Economic Institute of the University of Stockholm, special groups of Swedish food distributors in Stockholm, the Centre d'Etudes du Commerce in Paris and other specially called meetings of food distributors in Holland, Belgium and Switzerland.

His lectures in England and on the Continent gave impetus to the holding of the first International Congress of Food Distribution, which was held in Paris, June 20-23, 1950. The French government, in recognition of Mr. Zimmerman's contribution towards the economic welfare of France and Europe in general, conferred upon him the medal—'Chevalier de Merite Commercial'—and Paris made him an honorary citizen.

On June 22-26, 1953, the 2nd International Congress of Food Distribution was held in Ostend, Belgium, and the King of Belgium, in recognition of Mr. Zimmerman's work towards the success of this Congress, conferred upon him

the decoration of "Chevalier de l'Orde de la Couronne" (Knight of the Order of (617) the Crown).

On October 19, 1953, in recognition for the significant contribution made by Mr. Zimmerman to the advancement of distribution, the Boston Conference on Distribution elected him to the Hall of Fame in Distribution.

In April 1955, McGraw-Hill Book Company published Mr. Zimmerman's latest book, The Super Market: A Revolution in Distribution.

By Mr. Baker:

Q. Mr. Zimmerman, how would you define a super market?

A. Well, a super market is a highly departmentalized retail establishment dealing in foods and non-foods, with at least one of the departments on a self-service basis, furthermore doing a minimum of \$250,000.

I would like to qualify that by saying that that was the first definition we had in 1937.

Now, we have changed the volume definition to approximately \$500,000, although the average volume for the nation in the super market business is over \$900,000.

Hearing Examiner Hier: That is per unit?

The Witness: Per unit.

Hearing Examiner Hier: Per store?

The Witness: \$900,000 per store per annum.

(618) By Mr. Baker:

Q. Mr. Zimmerman, do you keep statistics in your organization and have you over the years, showing the

percentage of food sales by super markets to total food sales?

A. Well, we started carrying statistics since 1936, when statistics first became available, and each year we have made a statistical analysis of the industry's activity.

Mr. Baker: Your Honor, I would like to have marked as Respondent's Exhibit 113 a table entitled "Per Cent of Food Sales By Super Markets To Total Food Sales 1936-1954."

(The document referred to was marked as Respondent's Exhibit 113 for identification.)

By Mr. Baker:

- Q. Mr. Zimmerman, I show you Respondent's Exhibit 113 for identification, and ask you if you prepared that at my request?
 - A. Yes, I did.
 - Q. What are the bases for those figures?
- A. Well, these figures represent—when you say what are the bases—
 - Q. What is the basis for those figures?
- A. The basis is the over-all volume of the food industry and the percentage of volume done by the super market industry year by year.
- Q. Those are the figures that you have kept over the years since 1936?
- (619) A. Yes, they are a matter of record within our files.

Mr. Baker: I offer Respondent's Exhibit 113.

Mr. Mayer: I have the same objection we had to 104. I see no relevancy to this particular exhibit.

Hearing Examiner Hier: I do not either, Mr. Baker, Mr. Barton: If Your Honor please, on this matter of defenses which have been pleaded by Anheuser-Busch of meeting competition, changing market conditions, now the purport of this exhibit is that over a period of years there has been a transformation of the market in so far as the manner in which food items are being sold from the corner grocery store to a super market operation.

That transformation has had its effects in the problem of how items are priced in the stores in which they are sold, the corner store and the super market. Those are facts which management of a business, which wants to do business through that channel of distribution must take into consideration; and, if Your Honor pleases, I submit that each item in itself cannot be an explanation of the full story of the problem which the management of a company faces when it is dealing with a particular situation.

This is one facet of the problem, and this shows that over the years the super markets climbed from 6.3 per cent of the industry to 52.3.

I point out further that the evidence in this case (620) will establish, although it is not established at this time, through the witnesses who have gone on the stand so far, that in this same period from 1936 to 1954, there has been a tremendous shift of distribution of beer from the channel which distributed almost a hundred per cent of it in 1933 to another line, namely, the grocery store channel which is distributing a large portion of the beer today.

Hearing Examiner Hier: Well, that is conceded, is it not?

Mr. Barton: No. I think-

Mr. Mayer: I think Mr. Hallquist already testified to this, frankly.

Mr. Barton: Well, if Your Honor please, the testmeny of Mr. Hallquist was in general terms, and we do not think the record should be as general at this point on that very important issue which we are going to have the burden of proving in this case.

If Mr. Hallquist testified to it, Your Honor, I submit the whole subject has been opened up, so we can give the details on it.

Hearing Examiner Hier: Getting beyond that, there are two observations I would like to make. First of all, apparently you construe the term "changing market conditions" as used in the Robinson-Patman Act to mean over a period from 1936 to 1955 rather than a temporary price dip in a particular (621) locality, such as Staley made in Atlanta one time for three months because Hubinger cut the price on him down.

Apparently you are extending this term "changing market conditions" to several decades in construing it; is that right?

Mr. Barton: Your Honor, at this time I do not want to take a position as to what "changing market conditions" in the Robinson-Patman Act finally means. As we both know, that term is not the clearest term in the Act, in an Act which contains a number of terms that are not clear.

But my point is, and I think it is a stronger point on the meeting competition defense, that we cannot develop the full story on the meeting competition defense unless the basic facts are in the record, to show that there has been a dual shift taking place here over the years: First, a shift of the distribution of the beer from the on-premises tayern channel of sale to the off-premises, home consumption channel. Max M. Zimmerman, for Respondent Direct

Hearing Examiner Hier: Yes.

Mr. Barton: And that, secondly, simultaneously with that shift, which has been extremely prenounced over the years, but more pronounced in later years, there has been a shift of the sale for off-premises consumption from the tayerns to the grocery stores, and because of this shift from distribution of grocery stores, from corner grocery stores, to super markets, it has been to the super market type of operation.

(622) Now, in the super market type of operation the price at which competing commodities are sold is an extremely important element in the selection of the goods which the customer will buy, and that has posed the problem for Anheuser-Busch and for the other national shipping beers which have been falling behind in this channel of distribution.

I do not see how we can put the story in unless we can get the various little pieces of the jigsaw puzzle that add up to the full story.

Hearing Examiner Hier: I agree with that latter story, but there is another observation, Mr. Barton. If you were charged here with selling beer to super markets and other food outlets at a considerably lower price, the same beer, the same can, the same pack, and you sell to taverns, I might see where there is a defense, I might go along with you. But that is not what you have done.

That might possibly—I'm not saying it would be—but that might possibly be an excuse for that lower price to the super market. But that is not what you have done here. You have dipped that price in St. Louis to everybody, in taverns—

Max M. Zimmermen, to Respondent-Direct

Mr. Barton: It had tremendously different effects in different channels of distribution, your Honor, as we are prepared to prove.

(623) Hearing Examiner Hier: That is an area-price discrimination, it is not a nation wide cut. I don't see where this is a defense.

Mr. Barton: It is our basic position, Your Honor, that this matter, of an alleged area-price cut in St. Louis cannot be disassociated from the national picture in which Anheuser-Busch found itself in 1954; that the action taken in St. Louis was an integral part of the whole national picture, and I point out further to Your Honor, that in that connection the competitors of Anheuser-Busch in St. Louis, Falstaff, the principal one, was a competitor of Anheuser-Busch in the bread basket of Anheuser-Busch's distribution area, in other words, the great Midwest.

Falstaff, doing business in only 33 per cent of the country, is ranked, as has been brought in previous evidence, has grown from a position of eighth to third, and is continually growing.

I submit to Your Honor that in developing the picture of what happened in St. Louis, we cannot be restrained in showing to showing only St. Louis. We have to show the national picture that faced Anheuser-Busch to show, to put the St. Louis picture, in its proper perspective.

Hearing Examiner Hier: Are you going to attempt. Mr. Barton, in this case, to break the sound barrier, so to speak, that was set up by the Staley Case and by various cases (624) since then, of which Niehoff is one?

Max M. Zimmerman, ter Respondent Invest

Mr. Barton: If Your Honor pleases, the meeting competition defense has not hon, so far as I know, decided honorarea price case to date:

Hearing Examiner Hier: No.

Mr. Barton: Now, in connection with decision of what the meeting competition defense means in an area price case, I submit to Your Honor that the record should be permitted to develop all of the possibly relevant facts so that a decision can be made on all of the possible facets of the problem.

If we were to—the Staley Case, as Your Honor knows, was not an area price case and, consequently, if we would limit ourselves to putting in evidence of the type that would have been relevant in the Staley case, there is going to be no possibility of a record that will permit Your Honor to intelligently decide this issue of meeting competition, if you get to that issue in the final decision in the case,

Hearing Examiner Hier: Are you telling me, in effect—you have not said so plainly—but are you telling me in effect that one reason, one, if not the only reason, for the dropping of the price in St. Louis in 1954 was to find out whether a price cut could get them into the super markets in sufficient volume to justify the effort?

Mr. Ingamells: Your Honor, before we answer that, may I speak to Mr. Barton?

(625) Hearing Examiner Hier: Sure, get together,

(Discussion off the record.)

Mr. Barton: If Your Honor please, if I understand the question, it was, was one of the reasons for the St. Louis price reduction to see what would happen in sales through the off-premises super market area by reduction

Max M. Zimmerman, for Respondent-Direct

in price? The answer to that question is unqualifiedly, yes, and I submit to Your Honor that the evidence in this case is going to disclose that there was something done about the information that was obtained as a result of that price reduction. In other words, there has been adopted a program for a national basis to meet the problem of the price problem in this, what is becoming the dominent channel of distribution.

Now, it has not been through reducing the price of Budweiser nationally, it has been done by two means, as will come out in further evidence. We cannot, as you can see, put in our whole picture at the same time.

Hearing Examiner Hier: No, I know that.

Mr. Barton: But in general, it is going to come out, there have been adopted new packages of a size which will permit the sale of Budweiser at prices competitive to these—to Falstaff, to Hamms—to other regionals, who are cutting into the Anheuser-Busch business and, secondly, there has been put out a new and different beer which is sold at the same price as the regional beers.

(626) Now, those programs have been placed in effect as the sequel to the St. Louis situation.

Now, I submit to Your Honor that I do not want my remarks to be construed to mean that that was the only consideration. Obviously a strong consideration was that Anheuser-Busch had dropped, and it had dropped precipitously in sales, that St. Louis was an obvious place in which to get some additional volume and get it quickly, to keep the sales up, and that was a very important consideration.

But, as Your Honor knows, business men rarely do an act for one reason, and one reason alone. It is a

Max M. Zimmerman, for Respondent-Direct

variety of considerations which dictate any individual action.

Hearing Examiner Hier: Mr. Mayer, does the government recognize this testing the market matter as a defense in this case?

Mr. Mayer: No, sir.

Hearing Director Hier: In spite of the opinion in the General Foods Case, you deny it to be a defense!

Mr. Mayer: Yes, sir.

Hearing Examiner Hier: Well, frankly, I do not know whether it is or not; I never have heard it before.

Mr. Mayer: That is the only time it has ever been published, mentioned in published decisions.

Mr. Barton: Your Honor, I submit what has been mentioned in the context made with reference to General Foods, (627) is a part of the meeting competition defense. I do not think it relates to the changing market defense. I think it is part of the defense of meeting competition, as here, Anheuser-Busch was lowering its price to the price of Falstaff, who was one of the dominant and growing competitors of Anheuser-Busch.

Hearing Examiner Hier: Frankly, I do not know-

Mr. Barton: The problem of meeting for a short period, as General Foods, the same price of an important and dominant competitor seems to me to fit into the meeting—as a part of the meeting competition defense; at least that is going to be our argument, Your Honor, and I think it is an open question as of now in a decision of the Federal Trade Commission because, after all, that was not the basis for decision in the General Foods case by the majority in the case.

Max M. Zimmerman, for Respondent---Direct

Hearing Examiner Hier: If it had not been for that, Mr. Mayer, I would not take any evidence. I do not know whether it is a defense or not. I do not know where Commissioner Mead got that expression from. But there was no dissent on the part of the majority in the General Foods Case to Commissioner Mead's use of that term in the posture in which it was used, so apparently, as I said before, we are plowing new ground here. We do not have any precedent to go by.

I still do not see where this is meeting competition. To (628) me it probably is relevant on testing the market idea. I do not think it is relevant on the other at the moment, but it is probably relevant on that basis. I just do not know.

At any rate, that will be the ruling. You can put it in for that purpose, and that being the case, the record may show that the Respondent's Exhibits 101 through 113 are admitted to the record, subject to a motion to strike at the close of the Respondent's defense. Maybe we can thrush it out on a full record.

Mr. Barton: That is right.

(The papers referred to, heretofore marked for identification Respondent's Exhibits 101 through 113, were received in evidence.)

Ba Mr. Baker:

Q. Mr. Zimmerman, have you made any survey as to the number of new super markets which will be added next year?

A. Yes. We just published one in our December, 1955 issue.

Max M. Zimmerman, for Respondent Direct

Q. What does it show?

A. It shows that the super market industry will spend up to \$800,000,000 on buildings and equipment, and will build anywhere between 2,700 and 3,000 new super market units.

Q. In 1956?

A. In 1956,

Q. Mr. Zimmerman, from your own personal knowledge, what do you know with respect to the efforts of Anheuser-Busch in (629) selling to grocery stores?

A. Well, I have followed the activities of Anheuser-Busch since 1939, and I even recall that it was some time before spring that Mr. Garner, Bob Garner, who was a witness here, came to see me with a plan and a program to put on what we call a related sale of foods and beverages with the idea of getting the retailer or the super market interested in promoting the sale of Budweiser and, at the same time, helping the retailer sell more of his profitable related items.

Q. Were there any other brewers that you know of that went into this promotion of beer sales for food items?

Mr. Mayer: Objection. I do not see the relevance of that question.

Mr. Baker: I have not finished the question yet.

Hearing Examiner Hier: Let him finish. I thought you were through.

Mr. Baker: Prior to Anheuser-Busch?

Mr. Mayer: I have an objection to the question. I do not see the relevancy of the activities of the other brewers.

Max M. Zimmerman, for Respondent-Direct

Mr. Baker: I will withdraw the question since we have already stipulated.

Hearing Examiner Hier: That saves me ruling on it.

By Mr. Baker:

Q. Mr. Zimmerman, what, in your opinion, has been the (630) principal consumer appeal of super markets!

A. Well, from the very beginning price has been the dominant appeal. As a matter of fact, you go back to August 1930 when Michael Cullen, opened up the first super market in Long Island, and heralded himself as King Cullen, the world's greatest price wrecker; and his animunition was unheard of and unprecedented low prices which attracted the consumers from a wide area; and another illustrative case of how important price is was when Big Bear opened up in Elizabeth, New Jersey, in 1932, and heralded itself as Big Bear, The Price Crusher; people came from distances of a hundred miles, as was later checked from their license plates, to shop in those markets.

Price has been a dominant factor through the entire development of the super market industry, which today is responsible for over fifty per cent of the business, and the consumers are offered all sorts of advantages such as modern buildings, all kinds of services. But price is the factor that determines the success or failure of a super market company, big or little.

Q. Does that, in your opinion, continue until today?

A. Well, if we know anything about consumers over the years, I think price will continue as far as a woman goes to shop, whether it is for food or other merchandise. Price is the dominating factor, but I might qualify it by

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saying that there are consumers who are willing to pay for service, and they (631) will pay a premium for such service, such as telephone, charge delivery, and there are only a percentage of these consumers in America who are willing to pay that price for this service.

- Q. From your experience and background would you say that women are even more price-conscious in shopping in super markets than men are?
- A. Well, yes. I think so from observations and from the statements of super market operators themselves. They recognize the male customer as a darned good customer because he is looking for the things that he loves, and he isn't so price conscious, and that is one of the reasons why so many women will not take their husbands along because they buy too darned much.
- Q. Mr. Zimmerman, in the history of super market development, do you know of any product, parchases of which were greatly stimulated through the super market because a woman could purchase that product there without embarrassment, perhaps, of requesting it of a retail clerk?
- A. Well, yes; one product stands out very, very specifically. Let me refresh you, it is the tissues, you know, sanitary napkins.

Well, we know that even in the days when the sale of sanitary napkins was confined almost exclusively to the drug store, the average consumer, especially the very sensitive one, she was very reluctant about asking for a package of (632) sanitary napkins.

The sanitary napkin manufacturers suddenly discovered the super market as a tremendous outlet for this product because it was sight and touch, and many of them

in the early period used to take the package of sanitary napkins and wrap it up in ordinary paper, that is, in the kraft paper, and so Mrs. Consumer could pick it up very geadily and put it in her shopping cart and nobody knew anything about it.

I could give you another example, too. You take in the, well, you take in the stores where they have selfservice liquor departments. The merchant has handy there paper bags, and Mrs. Consumer, who would hesitate to openly buy a bottle of liquor, puts it into that handy bag, wraps it around, puts it in her cart, and she feels perfectly at ease.

Mr. Baker: That is all.

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Cross Examination by Mr. Mayer:

Q. Mr. Zimmerman, in the same line, did you ever see a case of beer wrapped up in the super market?

A. No, but I have seen them in multiple-unit cartons.

Q. But clearly displaying the name of the beer on the side or the fact that the contents were beer?

A. Well, no, because is considered a food, and they advertise it as a food, that is, the brewers themselves have done a good job in bringing—in trying to distinguish between (633) liquor and beer.

Beer, is recognized as a food, and there is no compunction as far as I know about the average consumer in even taking a couple of bottles of beer in her hand and going around the store with them.

Q. Now, sir, in that figure of \$800,000,000, is that reported to you under any compulsion by the various super market chains that that amount of building is to be done next year? How do you arrive at that figure?

A. No compulsion.

Well, I can—I have in my pocket here—I didn't bring it along for evidence—but here are the tear sheets from our December issue in which we publish this whole survey.

Let me tell you how we do it. We have a super market merchandising research panel. This panel functions for us and for the members of the panel. An operator, he wants a question answered. He has a problem, and he sends in the question to us, and we send it out to our panel, which numbers about 450 stores, 450 operations, from a single unit to a multiple unit operation.

We get in these answers and then we tabulate them and arrive at some conclusion, and then we pass it back to our panel members.

Because we have been so helpful to the industry as a whole, we get a type of information which is usually not (634)—available to the rank and file of trade publications. You see—and to substantiate that ever more effectively—you see, we founded or rather we pioneered the super market industry. In 1936 I happened to write the first, you might say, thesis on the future of the super market, and started my publication, which acted as the vehicle to disseminate the information for the industry, and at a time when they had no leadership, we gave it to them in the form of enthusiasm, information, which we made available through our sources, and today we can get this kind of information.

For example, we send out a questionnaire, and we ask them how many super markets "did you build this year! How many markets are you going to build next year! What will be the size of the market?"

We go down and we ask them a lot of questions, and we get a very good return, and from that we can evaluate what the industry as a whole will do, and we arrive at these conclusions, and so far over the years they have been accepted with authority.

Q. In your exhibit, Mr. Zimmerman, 113 per cent of food sales by super markets to total food sales, included in those sales, I take it then, are beer sales; is that correct, sir?

A. That is the over-all volume; that is the over-all volume.

Q. Now, is beer sold in all the super markets that report (635) their sales?

A. In those super markets where it is permissible by law.

Q. Do you have any figures with you on the numbers of super markets that handle beer?

A. No, I am sorry; I didn't take it with me.

Mr. Mayer: That is all we have.

Hearing Examiner Hier: Mr. Zimmerman-

The Witness: Yes, sir.

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Hearing Examiner Hier: (Continuing)—is it your opinion that if Miller, Pabst, Schlitz, Blatz, and Budweiser sold at the same price in the super markets as the local beers or as beers which are selling for less, that they would out-sell the local beers?

The Witness: No, I don't think so; I don't think so.

Hearing Examiner Hier: Would the increase in sales make up for the lack of revenue which results from a price reduction?

The Witness: Well, I mean you have got to go just one step back. You take a local beer, and it will spend

more money advertising-wise in that market than a beer like Budweiser, which advertises nationally.

Hearing Examiner Hier: I understand.

The Witness: Therefore, they can win greater consumer acceptance in that specific area.

(636) Hearing Examiner Hier: And that would remain even though the price were cut?

The Witness: Well-

Hearing Examiner Hier: That advantage would remain?

(637) The Witness: Now, of course, you take the national beers like Budweiser, I think they have built up a prestige for their brand which even the local beer, with all its intensive advertising, does not ever a quire.

Even in the City of New York where you have got these highly popular local brands, a beer like Budweiser, Schlitz, Pabst, you will find, was more preferred in some, in certain, classes of homes where they recognize the quality and in some cases they are even willing to pay for that better quality.

Hearing Examiner Hier: Then it is your opinion that that prestige or good will or whatever you want to call it does overcome the advertising advantage which, the concentrated advertising advantages that, the local beer has?

The Witness: To an extent. If it did, why then, a beer like Budweiser would do much bigger volume income, let us say, in the City of New York.

Hearing Examiner Hier: I am still trying to get clear, do you think and, as an expert on merchandising, if Budweiser reduced its price to the local beer in selling in any

given market through super markets, that its volume would increase to the point where it would be-

The Witness: I am of the opinion and, as a matter of fact, I am of the belief, that if a beer like Budweiser could meet the price competition of the other local beers, that I think it could at least equal, if not increase, its share of the (638) business in that market.

Hearing Examiner Hier: Yes. But that is not the point only. In case it shared the business, yes, but could it increase the share of the business to the extent that it would be profitable?

The Witness: Profitable?

Hearing Examiner Hier: Yes.

The Witness: Well, I am not a broker, I don't know. Hearing Examiner Hier: I understand.

The Witness: I don't know their costs, but I imagine that—you know, I imagine that if they could probably increase their distribution 10, 15 or 25 per cent, let us say, I think they could reduce—they could sell their beer at a much lower cost because it is—we are in the era of mass production, and in mass production and in mass distribution the profit comes from turnover.

Hearing Examiner Hier: Yes, fast turnover.

The Witness: Fast turnover.

Let me give you an illustration of what happened in eigarettes. You know, for years the super market was a very poor customer for the eigarette manufacturer, and the super market carried eigarettes more as an accommodation for its customers.

About seven or eight years ago we made a study and we found that cigarettes are profitable, that despite the fact that (639) they carried only a 5 per cent gross

margin, the turnover was so great that they could make more money on cigarettes than they could on some of their higher margin profit items, and that was heralded not only to the super market industry but to the tobacco manufacturers, and today the super market is one of the biggest sellers of cigarettes because they make—they know they make a profit on it, and that applies to any item, whether it is beer, cigarettes or candy.

Hearing Examiner Hier: Pardon me, go ahead.

The Witness: If the beer people can get a higher turnover on their product, for example, if a store only sells today one case of beer a week, but if it could sell ten or 15 or 20 cases a week, that brewer should be able to sell that customer at a lower price and still make money.

Hearing Examiner Hier: Your gross margin, the super market's gross margin profit on the so-called national brands which I previously named is greater than on the local brands, is it not?

The Witness: No, not necessarily.

Hearing Examiner Hier: Any further questions? I guess that is all, Mr. Zimmerman. Thank you very much.

The Witness: Thank you.

(Witness excused.)

(Discussion off the record.)

Hearing Examiner Hier: All right, 9:00 o'clock in (640) the morning.

(Whereupon, at 11:35 a.m., the hearing was adjourned to reconvene at 9:00 a.m., Wednesday, December 14, 1955.)

(641) Wednesday, December 14, 1955.

Met, pursuant to recess, at 9:00 a.m.

Before: Frank Hier, Hearing Examiner

Appearances as before

(642) PROCEEDINGS

Hearing Examiner Hier: Go ahead.

Mr. Barton: If Your Honor please, I call Mr. William J. Shine to the stand.

WILLIAM J. SHINE was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination:

Hearing Examiner Hier: Spell your name for the reporter.

The Witness: William J. Shine, S-h-i-n-e.

By Mr. Barton:

- Q. Where do you reside, Mr. Shine?
- A. No. 8 Wickersham Lane, Clayton, Missouri.
- Q. By whom are you employed?
- A. By Anheuser-Busch, Inc.
- Q. What is your position with Anheuser-Busch?
- A. At the present time my position is director of marketing and pricing.
 - Q. How long have you held that position?
 - A. For about the last six months.

- Q. What was your position with Anheuser-Busch, if any, prior to that time?
 - A. I was director of sales research.
 - (643) Q. How long did you hold that position?
- A. As long as I had been with Anheuser-Busch, since September of 1951.
- Q. By whom were you employed prior to September, 1951?
- A. I was with Fletcher D. Richards, Inc., an advertising agency in New York City.
- Q. What was the nature of your employment with the Fletcher D. Richards agency?
 - A. I was director of merchandising and research.
 - Q. What did that involve?
- A. The organization and direction of all field research studies that we would conduct either for our own information at the agency or for our clients. It would involve all internal research, such as copy testing. It would involve the evaluation of all outside research studies that were presented, either to the agency or to the clients. It would involve the development of merchandising plans.
- Q. It would have to do with market testing, matters of that kind?
- A. Market testing, copy testing, setting up of test markets, and so forth.
- Q. In general, what has been your experience in the merchandising and research field prior to 1951, apart from this experience with the Richards agency?
- A. For seven years previous to my connection with Fletcher (644) Richards, I was with the New York agency of Pedlar and Ryan as director of research, performing much the same function as I performed at

Fletcher Richards, but, of course, for a different group of clients.

For two years before that I was with—out of commercial business entirely—I was with the Office of Price Administration here in Washington.

- Q. Where did you receive your formal training?
- A. At St. Xavier College in Cincinnati, Ohio.
- Q. What was your experience when you were at the Office of Price Administration?
- A. I was with OPA from May of 1942 to April of 1944.
- Q. What were you doing prior to the time you were with the OPA in 1942?

A. Well, for three years immediately before that I was with the Ross Federal Research Corporation in New York City, a private commercial marketing research organization that conducts all sorts and types of field research studies for magazines, newspapers, radio stations, manufacturers of various and sundry kinds of products, advertising agencies, and so forth.

Immediately preceding that I was in the newspaper business in Columbus, Ohio, in charge of department store advertising and research and promotion.

Q. Now, in connection with your duties with Anhenser-Busch (645) since 1951, will you please detail the scope of your duties.

A. Well, from an administrative standpoint, it involves the operation of a department of some twenty people. In this department we keep all of the permanent records of the company in so far as volume is concerned, as distinguished from the accounting records.

We keep the records of all of the sales that are made by our wholesalers and as they report them to us, we

keep the records of all the competitive sales that are made.

We keep records on industry sales, and then over and beyond this physical record-keeping, it is our primary assignment to analyze these records and these reports to make recommendations to sales management and the general management as these analyses might indicate.

- Q. Now, in connection with the duties with Anheuser Busch, have you conducted special surveys from time to time?
- A. Yes, sir; we have conducted a number of special surveys from time to time.
 - Q. What has been the general nature of such surveys?
- A. Well, we have made surveys among our own wholesalers to find their distribution of sales. We have made surveys through outside agencies, such outside agencies, as the A. C. Nielson and Company, and we have made many smaller surveys, such as an individual problem or individual market might dictate the need for such a survey.
- (646) Q. What associations, if any, are you a member of in the merchandising or marketing field?
- A. I have been a member of the American Marketing Association for the last fifteen years.
 - (A document was marked Respondent's Exhibit 114 for identification.)

By Mr. Barton:

Q. I show you an exhibit marked RX-114, and ask you what it is.

(Respondent's Exhibit 14-A was received in evidence.)

By Mr. Barton:

Q. I show you Exhibit RX-14-A, Mr. Shine, and ask you what it is.

A. It is a record of the Anheuser-Busch package beer sales to retailers by months for the years 1952 through October of 1955.

Q. What is the significance of a record—is this a record, by the way, which is kept by you in the normal course!

A. Yes, sir.

Q. What is the significance of this record which is kept with respect to sales by wholesalers to retailers?

A. As a producer of beer, Anheuser-Busch sells its products to a group of wholesalers throughout the United States. Therefore, any record of our sales of Anheuser-Busch sales, to those wholesalers, would not be a true and correct indication of the immediate trade acceptance or trade movement of that (665) beer.

You have what is known as the normal distribution lag. It might be a month or it might be two metals from the time that we sell beer to a wholesaler before the wholesaler sells it to the retail trade.

Therefore, for years we have had our wholesalers report to us each month on what they sell to retailers. Now, that information, tabulated on a month-to-month basis, is a close approximation of what the actual consumer purchases will be, because our wholesalers supply the retail trade in some cases two or three times a week, once a week, to the taverns and to the large grocery stores, and such, and since those taverns and grocery stores do never

carry a big inventory, that is, they would never carry a month or two months' inventory on hand, this record of retail sales would be an indication of the approximate sales to consumers.

Therefore, on a month-to-month basis a record of this kind of sales to retailers is, for our management, the most direct and comparative kind of information we can give them. They can compare November 1955 with November 1954, with November 1953 and know exactly what the movement, comparative movement, of merchandise has been.

Q. Mr. Shine, on the basis of RX-14-A, when did the sales drop which Anheuser-Busch experienced in 1950 occur?

A. It started in November of 1953 when the November 1953 (666) sales were approximately 220,000 cases less than they were in November 1952.

In December 1953 they were 265,000 less; in January 1954 they were 460,000 cases less, and it continued right along like that through the succeeding months of 1954.

Q. What is the fact with respect to whether or not the decline in sales as compared to the prior year became more pronounced as Anheuser-Busch moved into the relatively heavier sales season of the summer of 1954?

A. Well, that is very true, that this decline increased in May. If you will note, in May of 1954, sales are more than a million cases under May of 1953; in June, more than a million and a half; in July, almost two million cases—yes, almost two million, a little over two million cases less than July, 1953.

Q. Mr. Shine, what was the relationship of industry sales 1954 as compared to 1953?

- A. Well, industry sales were moving in a totally different pattern and direction. I don't attempt to memorize those figures. I have industry, I carry industry sales in my pocket; I can refer to them, but it wasn't like the Anheuser-Busch.
- Q. For example, what was the position of industry 1954 as compared with industry 1953 in June, that is, the first six months of 1954?
- A. For the first six months of 1954 the industry was down (667) eight-tenth of one per cent, and Anheuser-Busch for the first six months of 1954 was probably down seven or seven and a half per cent.
- Q. And where did industry 1954 finally end up as compared to industry 1953?
 - A. Industry in 1954 would be three per cent below 1953.
 - Q. Where did Anheuser-Busch end up 1954?
 - A. Thirteen per cent below.
 - Q. Thirteen per cent off?
 - A. Thirteen per cent off.

Mr. Barton: I offer, Your Honor, 14-A in evidence. Hearing Examiner Hier: You have no objection? Admitted.

(Respondent's Exhibit 118 was marked for identification.)

By Mr. Barton:

- Q. I show you RX-118, Mr. Shine, and ask you what it is.
 - A. It is a print of a page from Modern Brewery Age.
 - Q. For what date? Is that May, 1955?
 - A. I think this is the May, 1955, issue; yes, sir.

Q. What is the table which is shown at the bottom of that page?

A. At the bottom of the page is the production and sales of Missouri breweries, 1954 with 1953. It shows that Falstaff was the only brewery to have a plus for the year 1954 over 1953. (668) It shows that all of the other St. Louis breweries, Anheuser-Busch, Griesedieck Brothers, and so forth to have losses from any place from about 13 per cent to 20 per cent.

Q. Well, as a matter of fact, the St. Louis breweries are between 17 and 20 per cent, are they? The others, who had 12, 13—

A. Yes, sir. This 13 per cent I see here is actually Goetz Brewery, which is not a St. Louis brewery.

Q. Where is Goetz located?

A. Goetz is located either in St. Joseph or Kansas City; I think St. Joseph, Missouri.

Mr. Barton: I offer RX-118 in evidence, Your Honor.

Mr. Mayer: May I inquire for a moment?

Hearing Examiner Hier: Yes.

Mr. Mayer: Mr. Shine, was there any other explanation in the Missouri—in this particular issue of Modern Brewery Age concerning the situation with the Missouri breweries?

The Witness: Any other explanation?

Mr. Mayer: Any other figures or statistics regarding it?

The Witness: In this issue?

Mr. Mayer: Yes, sir.

The Witness: Not that I know of. Mr. Mayer: We have no objection. Hearing Examiner Hier: Admitted.

(669) (The document referred to, heretofore marked Respondent's Exhibit 118 for identification, was received in evidence.)

(Respondent's Exhibit 119-A through D was marked for identification.)

By Mr. Barton:

Q. Mr. Shine, I show you RX-118-A through D and ask you what it is.

A. This is a record of advertising expenditures for newspaper space, outdoor space, radio time and television time for the St. Louis breweries by months for the years 1953 and 1954.

Q. How was it prepared and by whom?

A. This was prepared at our request by the D'Arcy Company, our advertising agency. They, in turn, contacted the individual newspapers, the individual outdoor plants, the radio stations and television stations to get the specific information.

Q. Now, I note from RX-119 that in 1953 Anheuser-Busch's advertising expenditures were less than one-fourth of Falstaff and less than one-third of the other two competitive St. Louis beers. What is the explanation, in your opinion, if any, for this disparity in advertising expenditures between Anheuser-Busch and its St. Louis competitors in 1953?

A. I think the simple explanation is that a relative measure of sales—advertising expenditures, as a general rule, are in relation to sales, and when Anheuser-Busch's expenditures (670) are considerably less than its competitors' expenditures, it is a natural assumption and conclusion that their sales were less than their competitors' sales.

Q. What was the general relation in 1953 of Anheuser-Busch and its competitors, so far as advertising and so far as sales are concerned?

Mr. Mayer: Mr. Examiner, I hate to interrupt here, but I think he is asking questions which are clearly answerable by figures in this exhibit. He is merely asking the question—

Hearing Examiner Hier: Read that question back. (The question was read back.)

Mr. Barton: If your Honor please, the sales figures are not on here, and this is preliminary to another question, which is a line I wanted to go into.

Hearing Examiner Hier: I think the objection is well taken so far as advertising is concerned. It shows that, but it does not show it so far as sales go. Since it is coupled, I think he should answer. You may answer.

The Witness: Well, in a quick summary, the other St. Louis brewers did about six times as much volume, that is, sales volume, as Anheuser-Busch, and these figures here will show that the other brewers did about eleven times as much advertising as Anheuser-Busch.

By Mr. Barton:

- Q. Now, from a commercial standpoint and from your viewpoint in (671) the marketing field, how does a company determine their advertising expenditures in relation to sales?
- A. There are two general ways they do it. One would be in relation to their past sales record. The other would be in relation to their forecasted or prospective future sales. In either event, whether a company was going to

develop its 1956, let us say, advertising expenditures on the basis of their 1955 sales or on the basis of what they hoped and expected and planned and budgeted their 1956 advertising sales to be, they would do it either on one of two bases; either a fixed percentage of sales, in other words, they would have a company policy that they would spend X per cent of their sales revenue for advertising, or another method would be they would project their sales or consider their historical sales in terms of a unit, like so many cases, or so many barrels, and fix their advertising expenditure at so many dollars and cents per barrel, or so many dollars and cents per case, and project their advertising budget on that basis.

Q. Is that always the case of a fixed relationship either to the past or the projected sales?

A. No, you can't say it is always the case. It is in general, it is the method that is used.

Hearing Examiner Hier: That is really maintenance advertising, is it not? Sales maintenance advertising, as distinguished from new business advertising?

(672) The Witness: You might call it that, and that, I think, leads directly into the answer I was going to give, that many companies, from time to time, will find themselves in a position where they decide that in a particular market or in a particular year, or for a particular reason, they are going to spend far more than their normal percentage of sales, far more than their normal amount per unit, and they will regard it as investment spending.

Hearing Examiner Hier: That is the increased sales market, put on the pressure, put on the heat?

The Witness: Yes, sir.

By Mr. Barton:

- Q. When such investment advertising or investment is made, what in general, would be the relationship between advertising and expected sales over the period, or over the long run?
- A. Over the long run you would expect to eventually come out to the same figure. Your investment spending might be five times, or ten times, the amount of your normal expenditures in the particular investment period. You would expect to get increased sales as a result of that investment spending, possibly over a longer period of time it would wash out or level out to approximately what has been your normal basis.

Hearing Examiner Hier: Have you got any reliable information, statistics, or what not, which would indicate the effectiveness of advertising in persuading beer-drinkers to (673) switch competitive brands to yours, as distinguished from advertising which is beamed toward the non-drinker or the relatively new drinker? I am just wondering how effective beer advertising is.

The Witness: May I ask, Your Honer, if you are limiting it just to advertising appeals?

Hearing Examiner Hier: Yes.

The Witness: I don't think I could give you a single precise, concrete example of a case where advertising alone has had such a result in any appreciable or, let's say, commercially valuable extent.

Sure, I could point out isolated cases and cases where there has been a temporary gain of 1 or 2 percentage points, but nothing major.

Hearing Examiner Hier: Off the record.

(Discussion off the record.) Hearing Examiner Hier: Back on the record.

By Mr. Barton:

Q. Mr. Shine, I note from RX-119 that in 1954 Anheuser-Busch increased its advertising expenditures in St. Louis to approximately those of Falstaff Brewing Corporation.

Would you explain the commercial considerations from a marketing point of view which made that increase

of advertising expenditures a sound move?

A. We'l, that increase in advertising expenditures had one (674) primary purpose and that was to get an increased volume of business, and an increased share of business, and it was hoped that by so doing that it would get it.

Hearing Examiner Hier: I conder if you can tell me how much of this expense, this \$500,000, is attributable to the widespread announcement of your drop in prices! There are a couple of full-page adds already in this record which set your firm back some money. I am wondering how much that \$500,000 was primarily the announcement that you had dropped your price?

The Witness: Your Honor, I cannot give you an exact, or even an approximate figure on that. I am sure that our advertising director would be able to give you such detailed figures. However, I think I can say in a general area that the specific newspaper advertisements on the drop of prices represented a relatively small part of the total.

Hearing Examiner Hier: Go on.

By Mr. Barton:

Q. Mr. Shine, would it, in your opinion, have been commercially feasible to have increased advertising to the extent it was between 1953 and 1954 if there had not been a simultaneous price reduction in St. Louis and the increase in other selling activities?

A. No. sir: I do not think so.

Hearing Examiner Hier: Where does that leave us? I (675) get the implication in that question that the advertising, the increase in the advertising, was brought about by the price reduction. Is that so? I don't want to draw a false inference here.

The Witness: Your Honor, I don't think it would be correct to say that it was brought about by the price reduction. I think that to some extent, the two things went hand in hand, but I don't think one brought about the other.

Hearing Examiner Hier: Would you have done it, done the advertising, if you had not dropped the price, let us put it that way, the increased amount of advertising.

The Witness: No. sir.

Hearing Examiner Hier: All right, go on.

By Mr. Barton:

- Q. Now, you are aware, Mr. Shine, of the sales increase that Anheuser-Busch had after it reduced the price in St. Louis in June of 1954?
 - A. Yes, sir.
- Q Would that increase in sales that Anheuser-Busch obtained, have been obtained, in your opinion, had not Anheuser-Busch increased its advertising expenditures

along with the price decrease, so as to approximately equal the Falstaff advertising expenditures in that period? In other words, suppose there had been a reduction in price only and no increase in advertising expenditures to approximately the level of the local (676) competition?

A. No, sir: I do not think it is reasonable to assume that there could have been comparable results.

Q. What is the basis for that opinion?

A. Well, there have been many other markets in which we have from time to time done some of this investment spending of advertising, where we have spent more than a normal amount, and we have not had long-term substantial increases in our sales.

Q. I think you misunderstood my question, Mr. Shine. My first question is to the point would a similar sales result be obtained by merely a price reduction if there had not been an increased advertising expenditure which was made in 1954 as compared to 1953?

A. No, sir; I do not think there would have been because there were many other factors along with the reduction in price, and the amount of advertising, all which have to tie into one package.

Q. Yes.

Now, if there had been merely an increase in the advertising expenditures to match the Falstaff and other advertising expenditures, would there have been that similar increase in St. Louis sales?

A. No, sir. If we had reduced our prices to the prices of Falstaff and the other local competitors, if we had increased (677) our advertising expenditures to the level of Falstaff and the other popular priced brewers in St.

Louis, there is no indication that we would have been able to attain a sales level that other brewers have reached in St. Louis.

Q. Well, in other words, the experience indicates that merely increasing advertising expenditures would not obtain the sales results that were obtained in St. Louis?

A. That is correct.

Hearing Examiner Hier: Are you through, Mr. Barton, on that point?

Mr. Barton: Pardon?

Hearing Examiner Hier: Are you through on that particular point?

By Mr. Barton:

Q. What specific example would you cite in connection with this point that the mere increase in advertising expenditures would not create the sales results?

A. Well, I can cite several examples where Anheuser-Busch has used increased advertising and has not obtained any concrete, long-range appreciable result in sales.

For example, within the last couple of years, I remember a campaign that we ran in Massachusetts. It did not have any long-range substantial effects on increasing our sales.

I can remember special campaigns that we ran in northeastern Ohio, using television out of Cleveland, and so forth, (678) that had no substantial long-range sales increases.

I can remember campaigns that we have run in Texas, campaigns that we have run in Los Angeles, and so forth,

and they did not produce long-range appreciable sales increases.

Mr. Barton: Your Honor, I offer RH-119-A through D.

Mr. Mayer: Mr. Shine, did you prepare this exhibit!

The Witness: Did I?

Mr. Barton: I think he has testified as to the manner in which it was prepared.

Mr. Mayer: Are you familiar with any of the figures, the basic information appearing on this exhibit?

The Witness: Familiar with the figures?

Mr. Mayer: Yes.

The Witness: Yes, sir.

Mr. Mayer: What does the \$2,205 in December television advertising, network and non-network advertising (Anheuser-Busch) in 1953 mean?

The Witness: It means that that is the amount of money that was spent for television station time.

Mr. Mayer: Do you have those figures in your books and records?

The Witness: Do I have them in my books and records? No, sir.

Hearing Examiner Hier: That is not the question. (679) Does the Respondent have them?

The Witness: Yes, sir.

Hearing Examiner Hier: You have a canceled voucher, I presume, for the payment?

The Witness: Yes, sir.

Mr. Mayer: We have no objection.

Hearing Examiner Hier: Very well, 119 may be admitted.

(The document referred to, heretofore marked Respondent's Exhibit 119-A through D for identification, was received in evidence.)

Hearing Examiner Hier: We will take a short recess. (A short recess was taken.)

Hearing Examiner Hier: All right; you may go ahead.

It appears from the transcript, daily transcript, that there is some question about the admission in this record of several exhibits. In order to clear that up, let the record show that Respondent's Exhibits 60, 61, 85 and 93-A and B were received in evidence.

(The documents referred to, heretofore marked Respondent's Exhibits 60, 61, 85 and 93-A and B for identification, were received in evidence.)

Hearing Examiner Hier: And to clear it up further, the record may show that Respondent's Exhibits from 53 through (680) 119-A through D, as identified in the record, have all been received in the record, with the exception of 94 and 95, which exhibits were withdrawn by Counsel offering them.

(Respondent's Exhibit 120-A through S was marked for identification.)

By Mr. Barton:

- Q. Mr. Shine, I show you RX 120-A through S and ask you what it is.
- A. It is a record of advertising expenditures by Anheuser-Busch and various other brewers in a selected

A That is a record of Budweiser sales and their share of the injurket in St. Louis and St. Louis County in the court 1955 by months through October of 1955.

We show on this the number of statistical cases that have been sold, the share of the total package been market that they represent and the percentage of change from the previous year.

Mr. Barton: Your Honor, I offer in evidence RX 114. Mr. Mayer: No objection.

Heaving Examiner Hier: Admitted.

(The document referred to, heretofore marked for identification Respondent's Exhibit 114, was received in evidence.)

(A document was marked Respondent's Exhibits 115-A through -D for identification.)

(647) Bu Mr. Barton:

Q. I show you Exhibits RX-115-A through -D, and ask you what they are.

A. This is a record of the package beer sales of Palet beer in St. Louis and St. Louis County by months from 1945 through September of 1955, showing for each month the number of statistical cases sold and the percentage of the total package beer sold in the area.

Mr. Barton: Your Honor, I offer in evidence RX-115-A through -D.

Mr. Mayer: May I inquire with respect to one question?

Where did you get the figures appearing on this exhibit. Mr. Shine?

William J. Shine, vor Respondent - Percet

The Witness: These figures are obtained from reports at are issued each month by the Missouri Brewers Assolution.

Hearing Examiner Hier: Is that a public set of statistics? I mean, all I am inquiring about is whether he has a source to which he can go?

The Witness: Your Honor, I think they would be recarded as a public source. It is a subscription service, You pay for a private organization which publishes the flaures, but they are also published on a free basis by one of the newspapers in St. Louis.

Mr. Mayer: These figures would be the ones that (648) appear in the Post-Dispatch, wouldn't they?

The Witness: Yes, sir.

Mr. Mayer: Do they come out of the Reporting Service at Jefferson City?

The Witness: The Post-Dispatch, so far as I know, buys the Reporting Service from Jefferson City, and then puts it out in a slightly different form.

Hearing Examiner Hier: At any rate, you have a means of checking.

Mr. Mayer: Yes, sir. We have no objection.

Hearing Examiner Hier: All right, 115-A through -D is admitted in evidence.

(The documents referred to, heretofore marked for identification Respondent's Exhibits 115-A through -D, were received in evidence.)

By Mr. Barton:

Q. Mr. Shine, did Pabst reduce the price of Pabst in St. Louis in June, 1954 equivalent to the price of Falstaff and the other St. Louis beers?

William J. Shine for Respondent Innes

A. Yes, sir.

Hearing Examiner Hier: That was \$2.25,

Mr. Barton: Pardon! That is on a 24 twelvesops returnable bottle, yes.

Bu Mr. Barton:

Q. And that price reduction of Palist was at the the same (649) time as the reduction of Budwesser; the price of Falstaff, was it not?

(650) A. It was at about the same time. I would say it was within a day or two of the same date.

Q. And according to RX-115, what were the sales results of that price reduction by Pabst?

Mr. Mayer: I think the exhibit will speak for itself. Mr. Examiner. It will save—

Mr. Barton: If Your Honor please, I think in order to tell a story intelligently we have to lay the basis for a further series of questions.

Hearing Examiner Hier: Well, if it is a preliminary question he may answer it, even though it is on the exhibit.

The Witness: There was a slight gain in share of the market, and there was a slight gain in the total number of cases that they sold.

By Mr. Barton:

- Q. For example, what was their share of the market before the price reduction in 1954?
- A. May of 1954 they had 1.4: June they had 1.9: July they had 3 per cent.
- Q. Now, Mr. Shine, is Pabst a so-called national shipping brewer?

A. Yes, sir.

Q. And are they what is sometimes referred to in the trade as a premium beer or premium priced beer?

A Yes, sir.

(651) Q. Prior to their price reduction in St. Louis in 1954 had their prices, had the price of Paist, been above the price of Falstaff and the other St. Louis orewers, apart from Anhenser-Busen for some period of time?

A. Yes, sir.

Hearing Examiner Hier: I think, Mr. Barton, this is a good place to put in those prices.

What was the price of Pabst for the 24-bottle case, 12-ounce bottle case, on January I, 1954; do you know?

The Witness: It was approximately \$3.

Hearing Examiner Hier: Yours was \$2.93, if I remember?

The Witness: Ours was in that neighborhood, yes, sir: Pabst was a few pennies higher than Budweiser.

Hearing Examiner Hier: When you reduced to \$2.68—on when was it, March—

The Witness: No. sir; January.

Hearing Examiner Hier: January?

Mr. Barton: January 4.

Hearing Examiner Hier: All right.

What was the price of Pabst then?

The Witness: They went down the same amount that we went down.

Hearing Examiner Hier: And in June they went down-The Witness: They went down to the price of the local brands.

(652) Hearing Examiner Hier: In other words, they followed you?

The Witness: Yes, sir.

Hearing Examiner Hier: All right.

The Witness: They followed us, I think, in all pasprobably by a matter of a day or two.

By Mr. Barton:

Q. Mr. Shine, to what do you attribute the relatively slight increase in the sales of Palist during 1954 as compared to the increase which Anheuser-Busch obtained when the Budweiser price was lowered?

A. In my opinion it was due to the fact that Pabst had a much smaller base to start from, they had much less acceptance in the market, or much lower standing in the market.

Hearing Examiner Hier: What do you mean by "standing?" Do you mean advertising?

The Witness; Sales standing, their sales standing, their general market acceptance.

Hearing Examiner Hier: Consumer acceptance!

The Witness: Consumer acceptance.

Hearing Examiner Hier': Go on.

By Mr. Barton:

Q. Now, what does that indicate to you with respect to the possibility of the effects of a Budweiser reduction in another market besides St. Louis?

(653) A. It indicates rather clearly that if Budweiser had attempted a price reduction in some other market where they had a small share of the market like Palst has here, where they had a small volume in the market where they had relatively little consumer acceptance, that

the results would have been comparable. There isn't any reason in the world to assume that if Budweiser was operating from a similar base position as Pabst had in St. Louis, that they would have any different results; and the Budweiser position in many markets is comparable to the Pabst position in St. Louis.

Hearing Examiner Hier: What are some of those markets? Milwaukee, of course, let us forget that; some other markets besides Milwaukee.

The Witness: Well, New York.

Hearing Examiner Hier: New York? Pabst outselfs Budweiser in New York?

The Witness: No, sir; I didn't mean that. I meant that the share of the market that Budweiser has in New York is approximately equal to the amount that Pabst has in St. Louis; Budweiser's share of the market in New York is probably two or three per cent. It is a very low percentage share of the market, and that was true for Budweiser in practically every major market in the country where there are substantial popular priced breweries in operation.

Hearing Examiner Hier: Is there a market, to your (654) knowledge, where Budweiser and Pabst both have one and a half per cent, or whatever it was?

The Witness: There probably are a number of such markets. Offhand, to name individual markets, I do not know, but there probably are a number of them where the the relative sales of Budweiser and Pabst are very similar. When you say markets, I am referring to individual cities. Yes, there probably are a number.

Hearing Examiner Hier: Go on.

By Mr. Barton:

Q. I show you RX 116 A through Z 13, and ask you what it is.

(The documents referred to were marked Respondent Exhibit Nos. 116-A through -Z 13, inidentification.)

The Witness: This is a record of package beer sales by brands and by breweries for all of the individual sellers into St. Louis and St. Louis County other than those brands that have been included on a previous exhibit that has been submitted.

Mr. Barton: That is Exhibit RX-18, Your Honor.

The Witness: This covers the period from 1938 through 1955.

Mr. Barton: I offer Exhibits RX-116-A through -Z-13 in evidence.

Mr. Mayer: Is the source of the figures on this exhibit the same source as the other exhibit, Mr. Shine?

(655) The Witness: Yes, sir.

Mr. Mayer: We have no objection.

Hearing Examiner Hier: Admitted.

(The documents referred to, heretofore marked as Respondent Exhibit Nos. 116-A through -Z-13, previously marked for identification, were received in evidence.)

By Mr. Barton:

Q. I show you RX-117 and ask you what it is.

(The document referred to was marked Respondent Exhibit No. 117, for identification.)

The Witness: Well, this is a projection of sales of Griesedieck-Western, Falstaff, Griesedieck Brothers, and Anheuser-Busch in St. Louis and St. Louis County, and a record of the actual sales of those four brands in St. Louis and St. Louis County by months, beginning in January, 1952, and extending through August, 1955.

By Mr. Barton:

Q. Now, you say it is a projection of sales. What part of the chart represents a projection of sales?

A. Beginning in the left-hand side of the chart you will see for each brand a solid line running through the years 1952 and 1953. That was the base from which the projections were made.

From 1954 and 1955 you will see a dashed line continuing from that solid line. Those dashed lines are the projections from the solid lines.

(656) The broken lines that run along each one of the straight lines are the actual month-to-month sales.

Q. I note on Exhibit RX-117 that the trend of the sales for Griesedieck Brothers, for example, has been projected for 1954-1955, as represented by the broken line which continues the straight line referring to that product, and I ask you, based upon the solid line which runs from 1952, for 1952 and 1953, and I ask you whether, in your judgment, a projection based upon such trend line for the months of 1952 and 1953 is a sound statistical method?

A. Yes, sir; it is a sound method because this projection is not a projection of the years 1952 and 1953; it is a projection of the 24 successive months of 1952 and 1953. So our base for our projection is what had been going on in 24 successive months, not what had been going on

in two successive years; and you will notice that as a result of these projections that in each and every case the actual situation as of August, 1955 for each one of those brands is very close to the projected line for that brand, and those actual lines had been very close to those projected lines for four or five months.

Hearing Examiner Hier: Now, this projection indicated by the broken lines is what would normally, in your opinion, have been expected to happen if these price gyrations for nine months or a year in 1954 and 1955 had not taken place?

The Witness: Yes, in general. But I would like to (657) qualify that just a little bit to say that the projections are not my opinions; the projections are actual mathematical projections. I haven't just taken the lines—

Hearing Examiner Hier: I know.

The Witness (continuing): —for 1952 and 1953 and extended them some way on the basis of an opinion. They are mathematical projections.

Hearing Examiner Hier: But I mean an individual looking at this without the explanation you have just given would get the impression that these broken lines should have been bent considerably in one direction or another, because of the dips and rises in the actual sales.

The Witness: In 1954.

Hearing Examiner Hier: Yes, that is right.

The Witness: Yes, sir.

Hearing Examiner Hier: They are projections of the trend in 1952 and 1953 carried out.

The Witness: In 1952—if the month-to-month conditions through 1952 and 1953 had continued under similar conditions, the dotted line would have resulted.

Hearing Examiner Hier: I see.

Bu Mr. Barton:

- Q. Would you explain further the basis upon which the projection of a month-to-month tendency in 1952 and 1953 was extended for the period 1954 and 1955.
- (658) A. The mathematical basis on which the projection was made was the generally accepted statistical method known as the least squares method of projections, a commonly accepted statistical method for making projections on a satisfactory base, the least squares method.
- Q. Now, in the case of Griesedieck Brothers and the projection that appears on RX-117, are there any other considerations known to you which support the validity of the projection for 1954 and 1955 as shown in RX-117?
- (659) A. Well, I think that the known graph of Griese-dieck Brothers sales outside of St. Louis and St. Louis County, I think that the known trend of Griesedieck Brothers draught beer sales in St. Louis and St. Louis County, which are generally similar to the actual Griese-dieck Brothers' line here for package beer in St. Louis and St. Louis County, would lend support to the statistical projections.
- Q. In other words, there was no change in the prices outside St. Louis and St. Louis County on the beers competitive with Griesedieck Brothers beer and Griesedieck Brothers' sales outside St. Louis declined to the same extent or similarly—
- A. To approximately the same extent, and certainly in the same general direction; and, to the best of my knowledge, there was no change in prices of Griesedieck

Brothers beer outside of St. Louis during the period of 1954 and 1955.

Q. So far as you know there was no change in the price of competitive beers, beers competitive to Griesedleck Brothers, outside of St. Louis?

A. No. sir; not during the years 1954 and 1955.

Hearing Examiner Hier: Mr. Shine, can you answer the same question with reference to your own beer!

The Witness: In 19-

Hearing Examiner Hier: Yes; in other words, does the increasing trend, gradual but nevertheless persistent, in 1952 and 1953 in St. Louis County represent approximately or roughly (660) the trend nationally?

The Witness: Yes, sir.

Hearing Examiner Hier: It does?

The Witness: Yes, sir.

Mr. Mayer: May I have that question and answer read, sir?

Hearing Examiner Hier: Read it back, Mr. Reporter. (The question and answer were read.)

Hearing Examiner Hier: Do you have enough statistical information in your files to say whether or not the other two beers represented here, Falstaff and Griesedieck-Western, show national trends closely similar and closely approximate to the trends depicted on this Exhibit 117 for the year 1952 and 1953?

The Witness: Well, Your Honor, without referring back to the actual statistics, I am inclined to think that the Falstaff line on here might be a little lower than their national trend.

In other words, I believe that the Falstaff national gain may have been a little sharper, a little higher.

Hearing Examiner Hier: More precipitous?

The Witness: Than the gain shown on this particular chart. I am inclined to think that the Griesedieck-Western line would generally approximate their condition.

Hearing Examiner Hier: All right.

(661) The Witness: I might add this, that I am very certain that so far as general direction is concerned, they are correct. There might be a slight difference up or down in slope but in general direction they are correct.

Hearing Examiner Hier: Is there in the record, Mr. Barton, a comparable graph for national beer sales?

Mr. Baríon: You mean of each—of the industry? Hearing Examiner Hier: Of the industry.

Mr. Barton: Yes.

Hearing Examiner Hier: In other words, a certain part of this upward slope in the case where there is an upward slope may be attributable to increased beer consumption?

Mr. Barton: The figures are actually in the record on total beer—

Hearing Examiner Hier: Well, if the figures are in the record, a graph can be constructed, of course.

Mr. Barton: Mr. Shine, what is the fact with regard to national beer consumption in the last—well, let us take it right after the war and continue it up to date—what is the general picture on that subject?

A. The peak year of the brewing industry was 1947. In that year some 87 million barrels of beer constituted the total industry withdrawals, tax-paid withdrawals. That is the highest year that the brewing industry has ever had. Every year since then has been under that 87 million barrels.

(662) Now, it has not been under it very far. It has been in the neighborhood of 85, 84, 82, it has been coming up a little bit for the last couple of years. The latest figures that we have for the industry for the year 1955 run through August, I believe, and as of that time the industry is a little bit ahead of last year again. There is a possibility that the industry sales for 1955 will be equal to or very close to, maybe a little bit over, a little bit under, the 1947 peak; but looking at a graph line of it. Your Honor, from 1947 to the present time, it would be almost a straight line.

Hearing Examiner Hier: Almost a level line!

The Witness: Almost a level line.

Hearing Examiner Hier: Go on.

Mr. Barton: Your Honor, I offer in evidence RX-117.

Mr. Mayer: No objection.

Hearing Examiner Hier: Admitted.

(The document referred to, heretofore marked for identification Respondents' Exhibit 117, was received in evidence and was marked Respondents' Exhibit 14-A.)

Mr. Barton: Your Honor, in the initial hearing in this case an exhibit, RX-14, was offered and received.

The actual exhibit that was marked and received in evidence was different from the exhibit which Respondent thought was being offered and received, and also which I believe, Commission counsel thought was being offered and received.

(663) We have here marked as 14-A the exhibit which we thought we were offering, and intended to offer, except as it has been brought down to date.

Now, I would like to offer this—to withdraw the exhibit which is marked 14 in the record—and re-offer this RX-14-A in its place.

Hearing Examiner Hier: Have you had a chance to compare that?

Mr. Mayer: Have I had a chance to compare it? No, sir,

Hearing Examiner Hier: All right, let us spend a few minutes while you do it.

(A short recess was taken.)

Mr. Mayer: Rather than substitute, why don't we put in another exhibit. It contains less information than Respondent's Exhibit 14 carries; isn't that so?

Hearing Examiner Hier: The main question is, is the present exhibit in the record, 14, either inaccurate, incomplete or misleading?

Mr. Mayer: It is neither. It does not portray the information which I think Mr. Barton thought it portrayed when it was offered and received.

Mr. Barton: Which we thought, both of us thought, was being included. What happened was that page one instead of page two was actually placed in the record out in St. Louis.

(664) However, if there is any objection, I will simply offer this as Exhibit 14-A, and attach it, put it in the record at that point.

Hearing Examiner Hier: All right. You have no objection to that, have you, Mr. Mayer?

Mr. Mayer: No, sir.

Hearing Examiner Hier: All right. Exhibit 14 A will be received.

list of cities by newspaper, outdoor, radio, television and total for the years 1953 and 1954.

- (681) Q. Who selected the cities for which this advertising survey was to be made?
 - A. I did
 - Q. On what basis were the cities selected?
- A. Well, they were selected to be important cities, cities in which there were located important competitive breweries or if they were large cities and had no competitive brewery, just because—I think it could be summarized by saying they were important major marketing centers.
- Q. What did you do with the list of these cities after you made it up!
- A. I turned it over to our advertising agency, D'Arcy & Company and asked them to assemble the information. They assembled that information by writing to the newspapers, writing to the outdoor plants, writing to the radio stations, writing to the television stations in the various cities and asking them for the information on expenditures.
- Q. Does Exhibit 120 through 120-S contain all of the cities which you selected?
 - A. Yes, sir.
- Q. I noticed that on several pages, for example on 1200, there are notations that either some television stations did not report, or that some radio stations did not report.
- A. Yes, sir. Whenever an advertising agency seeks to get this kind of information and writes to the various media involved, (682) there will always be some of them who say that they do not regard this as public information and they will hesitate, and frequently refuse, to give the information.

There isn't any way in the world you can force them to give it, at least no way I know of that can force them to give it to you.

Q. In that situation, what was done in connection with the preparation of this Exhibit?

A. You couldn't do anything about it. It would have been ridiculous to estimate what those figures might have been so there just—that part of the report is left blank. There is no provision made for it.

The net result is that the advertising expenditure figures that are reported on here for all brands, other than Auheuser-Busch, are understated by the amount of the information that we did not get. Now, the Anheuser-Busch figures are from our actual record. We know that is exactly what we spent.

In the case of the competitive breweries, some of them are slightly under-stated and some were grossly understated.

Q. Depending upon how many stations did not report, what advertising was done?

A. Did not report, and how much money was involved in that expenditure on that non-reporting station.

Mr. Barton: Your Honor, I offer Exhibit 120-A through S in evidence and I would call attention to the fact that (683)—RX-120-S contains the sources and methods used in the preparation of the Exhibit.

Mr. Mayer: Mr. Examiner, it seems to me that in the Exhibit as he is offering it now, it is completely outside the scope of the complaint or any defense to the complaint. These are expenditures in areas which are not covered specifically by the price discrimination in the St. Louis

area and I wonder what the purpose of this particular offer is.

Mr. Barton: If your Honor please, there are several facets of the case to which the Exhibit goes. You will recall that yesterday there was some testimony in connection with Anheuser-Busch's Budweiser competition in any particular market area, the amount of advertising done by the local or regional dominant seller in that area, was an important factor in that competition.

It goes, your Honor, to the question of the public acceptance of Budweiser in any particular market because obviously, the amount of advertising which is done by Budweiser as compared with its competitors in that market is a very important factor.

The Examiner: However, it is not as reliable an indication as the actual sales on the market, of course.

Mr. Barton: Well, the advertising, of course, is a part of that sales picture. There is some equivalent between (684) advertising and sales. The fact that a brand can advertise heavily in the market is an indication of its sales position in that market, and that perpetuates its sales position in that market by virtue of its advertising.

Examiner Hier: How is that a defense to this! Supposing these local beers do out-advertise you in various cities around the country!

Mr. Barton: The allegations of this complaint say that, in effect, we are unable to sell in St. Louis at competitive prices because we have a public acceptance outside of St. Louis, and they compare Washington, D. C., tor example.

Examiner Hier: He means you make enough motey, you acquire a big enough bankroll from high prices outside of St. Louis to withstand the loss of the profits resulting

from a severe dip in prices in St. Louis. That is what he claims.

Mr. Barton: I don't mean that your Honor, but I mean that in order to put in the picture, the competitive picture, the industry, the situation with which Anheuser-Busch is faced and was faced in the year 1954 on a national basis, which is part of the picture with respect to the St. Louis picture, we have to put in those facts on a national picture.

In other words, we cannot put in the picture as to why we met Falstaff competition in St. Leuis without putting in the picture in a much wider area.

Moreover, your Honor, in connection with the Motion to (685) dismiss, you will recall the question was raised by your Honor, why St. Louis, why not some place else?

Now, your Honor, this goes directly to that issue of why not some place else, and there are many other facts that we are going to seek to put in the record today that go with that same issue, and I don't simply think we can adequately brief and argue the point which your Honor has indicated has an important issue in the case, and without having in these facts even though they be with respect to markets, outside of St. Louis.

Examiner Hier: Well, I agree with Mr. Mayer to this extent: I don't simply think this is relevant to the major defenses you have set up, except, this testing of the market defense, whatever that may be, or however it may develop.

Mr. Barton: Well, if your Honor pleases I would like to point out that this testing of the market is an integral part of the meeting competition defense. I submit to your Honor that we don't simply have to, as an initial matter, undertake to meet competition every place. We can

pick out the area in which we can meet. We want to meet competition, which will, in our opinion, give us the most information and do us the most overall—give us the most overall sales.

Examiner Hier: Off the record.

(Off the record discussion.)

· Examiner Hier: On the record,

(686) I agree with Mr. Mayer that this does not have, in my opinion, at the present stage of this case, at any rate, much probative value with reference to the meeting competition issue in this case in the factual posture that this case now presents, but it does, in my opinion, have some relevancy with reference to this testing of the market and, particularly, on the question of why the St. Louis market was picked to be tested.

I don't simply see much other point in the Exhibit, so I am going to over-rule the objection and admit it for what it is worth. I have some doubt about its weight, but that does not go to its admissability.

Mr. Reporter, 120-A-S is admitted in evidence.

(The documents referred to, heretofore marked Exhibits 120-A through 120-S were received in evidence.)

(The document referred to was marked Exhibit 121 for identification.)

Mr. Barton: Mr. Shine, I show you our Exhibit 121, and ask what it is?

A. It is a listing of Anheuser-Busch sales, beer sales, in the State of Texas, considering the totals here for the years 1946 through 1954, showing the actual volume that we had on the percent state totals that volume represented

Mr. Barton: Your Honor, I offer in evidence our Exhibit 121.

(687) Hearing Examiner Hier: Why Texas?

Mr. Barton: If your Honor pleases, it is the problem we always have of one Exhibit telling one story. I have a series of Exhibits here on Texas and Falstaff and the fact is that while Anheuser-Busch has been going down from 9.5 to 5.5 of the Texas beer market, Falstaff has been gaining regularly and consistently.

Hearing Examiner Hier: In Texas?

Mr. Barton: In Texas and elsewhere.

Hearing Examiner Hier: Well, elsewhere may be one thing.

Mr. Barton: And we are going to put in some more evidence, your Honor, on Texas and this is a preliminary Exhibit to that, to that line of Exhibits. I simply cannot put the whole thing in at one time.

Hearing Examiner Hier: Off the record.

(Off the record discussion.)

(688-689) Hearing Examiner Hier: Let us go back on the record.

Mr. Barton: I offer Exhibit 121 in evidence.

Mr. Mayer: I object on the basis of relevancy.

Hearing Examiner Hier: You are going to object and you may have a continuing objection to any evidence indicating loss, gain or anything else of sales of Anheuser-Busch beer in any particular area outside of St. Louis.

Mr. Mayer: That is right, yes, sir.

Hearing Examiner Hier: It is as to market conditions and what went on during 1953, 1953 and 1954, is that correct?

Mr. Mayer: That is correct.

Hearing Examiner Hier: That will be a continuing objection.

Mr. Barton: In connection with that objection I would like to note one of the first exhibits introduced by Mr. Mayer was the total national sales of Anheuser-Busch from 1953, etc.

Hearing Examiner Hier: He is not objecting to national figures—he is objecting to particular area figures such as Texas or Alabama or something like that.

Mr. Barton: He introduced not only Anheuser-Busch sales but other competitive beer sales, and what our total national sales with the combination of individual markets was.

Hearing Examiner Hier: Let us not get into that (690) hassle. He put them in and I know why he put them in and so do you.

Mr. Mayer: Another point, I think these figures basically are already in in Respondent's Exhibit 3 in which they made an attempt to show their State by State sales.

Mr. Barton: But not for 1946 through 1954.

Mr. Mayer: Is he defending 1954 practices on the basis of 1946 sales?

Hearing Examiner Hier: Let us take up one thing at a time.

You say they are in here. If they are in, they are not going in.

Mr. Barton: They are not in.

Mr. Mayer: Not in the precise form but Budweiser statistics are in for this year.

Mr. Barton: 1952, 1953 and 1954.

Mr. Mayer: In by months and by State for 1953.

Hearing Examiner Hier: And 1954?

Mr. Mayer: And 1954.

Hearing Examiner Hier: What is the point of putting this in?

Those States are in, aren't they. I am looking at 123 now, also 121. Wait a minute.

Mr. Barton: Let me put it this way: These exhibits, 121 obviously has other years than the years that are in on (691)—the others. And 122 contains the competitive beers in Texas which are not broken down in Respondent's Exhibit 3.

And similarly, 123 contains the state by state figures for Falstaff which are not contained in Respondent's Exhibit 3.

Hearing Examiner Hier: All right, it is duplication to some extent.

Mr. Barton: To some extent.

Hearing Examiner Hier: But not full duplication. Mr. Barton: I offer 121.

Hearing Examiner Hier: Over objection as stated, the continuing objection, it is in the record.

(The paper referred to, heretofore marked for identification Respondent's Exhibit 121, was received in evidence.)

By Mr. Barton:

- Q. I show you Respondent's Exhibit 122 and ask you what it is, Mr. Shine.
- A. It is a record of beer sales in Texas by years, beginning in the year 1946 for some brands, 1947 for all brands, going through the year 1954, showing the individual figures for about ten brands and for the total figures, the total industry figures.

This exhibit shows, for example, that Budweiser in 1954 sold a little bit less than it did in 1946 in the State of (692). Texas, both in its actual barrelage and substantially less than its share of the market. It shows that the leading brand in 1954, Pearl, has more than doubled its sales since 1947. Falstaff has more than doubled its sales. Lone Star has about quadrupled its sales. JAX has quintupled its sales.

Considering those four brands together, Pearl, Falstaff, Lone Star and JAX, they had about one-third of the business in 1947 and they have two-thirds of the basiness in 1954. And the industry total has not doubled in that time.

Mr. Barton: I offer 122 in evidence.

Mr. Mayer: Same objection except I would like to ask another question if the Examiner please.

The purpose of this exhibit is to meet which one of these sellers competition, which one—appearing on Respondent's Exhibit 122.

Mr. Barton: The only one of the sellers who is a gainer in Texas, who is doing business in St. Louis is Falstaff.

Mr. Mayer: I think these figures appearing on 122 also—well, we will get to that later. I am sorry.

Hearing Examiner Hier: All right. Objection is overruled. 122 is admitted in evidence.

> (The paper referred to, heretofore marked for identification Respondent's Exhibit 122, was received in evidence.)

(693) By Mr. Barton:

- Q. I show you, Mr. Shine, RX 123 and ask you what it is.
- A. It is a list of sales of Budweiser and of Falstaff in ten individual State for which we have such information available, showing the sales in 1954, and in 1953, and the percentage of change from 1954 over 1953.
- Q. Now, Mr. Shine, you said that these are for ten States for which such information is available. What did you mean by that?
- A. We have to depend on the published information that we can get. There are about half of the States in the Union that provide some sort of information that enables us to get some relative kind of information on competitive brands. These are the only ten States for which such information is available where Budweiser and Falstaff are direct competitors.
- Q. Mr. Shine, RX 122 indicates that over the year, since 1947, Anheuser-Busch has been losing ground in Texas compared to the four regional producers whom you named, who climbed from having a third of the market in 1947 to two thirds of the market in 1954, while Anheuser-Busch has dropped from in excess of 9.5 percent of that market in 1947 to roughly five percent in 1954. What if anything has Anheuser-Busch sought to do to arrest the development?
- A. Well, Anheuser-Busch has done many, many things in the State of Texas and I would say that probably the outstanding (694) thing that has been done is a very special and rather large appropriation advertising campaign that was run in that State in the latter part of 1952 and the early part of 1953.

- Q. I show you Exhibit 124 and ask you what it is.
- A. That is a record month by month from September 1952 through April 1953, showing by cities the amount of money that was spent in this special advertising campaign in Texas.
 - Q. What was the nature of that campaign?
- A. Well, as I have indicated it was a very special Texas campaign, a Texas advertising agency by the name of Tracy Locke submitted the campaign idea to the Anheuser-Busch management. You might refer to it briefly as one of those of Texas, by Texas, for Texas ideas. The theme of the campaign was the best tasting beer in Texas It was to be that localized. All the way through the campaign it was localized to Texas, prepared by Texas agency, written by Texas people. The theme, the illustrations, everything were localized in their character.
- Q. Was \$150,000 spent in this campaign, part of the regular budget for advertising, in Texas?
- A. No, sir. The \$154 thousand that was spent during this eight months was a very special appropriation and it was over and above the amount of money that was spent in Texas in proportion to Texas through our, you might say, regular and long-time advertising agency, R. C. D'Arey Company. This was a special campaign.
- (695) Q. What, if anything, was the result of that special Texas advertising campaign in September 1952 to April 1953?
- Mr. Mayer: I submit the sales figures would show that on the exhibit which the witness is presenting.

Hearing Examiner Hier: You mean the resulting sales! Mr. Mayer: Yes.

Hearing Examiner Hier: The exhibit does not show that. You may answer.

The Witness: The result was a slight increase in sales for a short period of time.

Hearing Examiner Hier: What do you mean by slight? The Witness: As I remember the increase in sales in Texas was something like one-half of one percent during the period of this campaign. And as soon as the campaign was over, the gain that we had disappeared, and if you will note in one of these other exhibits that we have already submitted, in the following year our decline was greater than it had been for several years preceding it.

Heaving Examiner Hier: Was this advertising directed towards switching drinkers or creating new drinkers, or did it have any particular slant?

The Witness: It was intended to sell Budweiser.

Hearing Examiner Hier: To anybody?

The Witness: To anybody.

(696) Mr. Barton: I offer in evidence Exhibits 123 and 124.

Hearing Examiner Hier: The same objection?

Mr. Mayer: Yes.

Hearing Examiner Hier: Those are overruled and the exhibits will be admitted in evidence.

(The papers referred to, heretofore marked Respondent's Exhibits 123 and 124 for identification, were received in evidence.)

By Mr. Barton:

Q. Mr. Shine, there has been testimony to the effect that Anheuser-Busch in the latter months of 1953, suffered a

sales reverse as compared to prior months in that year and corresponding months in previous years in overall sales?

- A. Yes, sir.
- Q. That is correct, is it not?
- A. Yes, sir.
- Q. What, if anything, was done to attempt to arrest these deteriorations in the sales position of Anheuser-Busch?
- A. Probably it would be an over simplified statement to say considerable consideration was given to every possible factor. I can remember specifically consideration given to increasing advertising, to changing the packages, to changing the prices, to changing the container size and dozens of other things.
- (697) After all of these various considerations had been given some attention, there seemed to be a general, well sort of consensus that the thing that we could do most quickly, most reasonably, was to make some changes in the containers and in the packages. The particular container sizes that got the most consideration at that time was the idea of a ten ounce container as against the prevailing 12 ounce size and the idea of a container that held one-fifth of a gallon as against the traditional quart.

The theory behind these container sizes was a rather simple one: That possibly a substantial number of people would be willing or would be anxious to buy Budweiser at a certain price, at the price of a popular priced beer, and would be willing to accept two ounces less of the Budweiser product at the same price.

And similarly, that people would be willing to accept a few ounces less of Budweiser in a fifth at the same price as they would a quart of another brand of beer.

The problem of introducing a ten onnce package and a lifth package was restricted somewhat by the fact that you could not put it in on this price consideration in all markets.

I think it has been amply demonstrated here that there is no such thing as a traditional differential, traditional mark-up system and so forth, and there were many markets where the mark-up conditions and the traditional trade practices (698) were such that we could not introduce a ten ounce container of Budweiser and have it priced competitively with the 12 ounce container of the local popular priced beers.

So in those markets we did not attempt to introduce the ten ounce package. We attempted its introduction only in those areas where it would be competitive. Similarly, there were other markets where we could not price our quart, our fifth competitively with the popular priced, quarts and we couldn't go into that market with that test package, with that new package.

Q. When was consideration first given to the possible new packages which would be competitive with the competing regional brands of beer in various markets?

A. Well, my recollection of the first time that they were being given any, let us say, deliberate consideration was in the latter part, in the fall of 1953. And I am sure that there are documents in the record that show early 1954, these packages were considered and actual action was taken on them.

Q. I show you RX 125.

Hearing Examiner Hier: Before you get to that, Mr. Shine, I make two deductions from what you said, and I want to see if they are valid in your opinion.

These two ounces of beer represent the price differential between local beers and Budweiser.

The Witness: Does it?

(699) Hearing Examiner Hier: În each particulat market that you are talking about.

The Witness: In some markets it does.

Hearing Examiner Hier: That is the market that you were thinking about introducing the ten ounce package into?

The Witness: Yes, sir, on the basis of the cost of the package which is not just on the two ounces of the been

Hearing Examiner Hier: Now then, did that two ounces less of beer enable you to maintain your net profit margin as it had been maintained in the past, or does it enable you to maintain a satisfactory net profit?

The Witness: On a percentage basis or on a per case basis?

Hearing Examiner Hier: Both, if you can give them to me.

The Witness: We could not maintain the same dollar profit on a case of ten ounce cans as we could on a case of 12 ounce cans. We could hope to maintain the same percentage profit on ten ounce cans that we could on 12 ounce cans.

Hearing Examiner Hier: That two ounces then really represents your gross profit, does it now?

The Witness: No, sir.

(700) Hearing Examiner Hier: I mean you can sell ten ounce cans of beer for the local price on 12 ounces.

The Witness: In some markets.

Hearing Examiner Hier: That is what I am talking about. I am talking about the selected markets.

The Witness: Yes, sir,

Hearing Examiner Hier: And still maintain your percentage profit margin, so it seems to me that that represents the margin.

The Witness: But that ten ounce can is being sold in competition with the local popular priced brand and I can tell you that in our actual preparation of the price schedules and the price comparison along there, we could not maintain all of the usual and traditional pricing factors. Wholesalers took a smaller mark-up on a case of ten ounce cans than they did on a case of 12 ounce cans. Retailers took a smaller mark-up on a case of ten ounce cans than they did on a case of 12 ounce cans.

Hearing Examiner Hier: Were you in the room yesterday when Zimmerman testified?

The Witness: No, sir, I was not.

Hearing Examiner Hier: The only point in his testimony then that I call your attention to is that he said that beer, premium priced beer, does not move well in the supermarket, because nine-tenths of the shoppers in the supermarkets are women and they are extremely price conscious and they (701) dislike that extra nickel or eight cents, or whatever it may be, premium which they must pay for the nationally advertised brands and they will usually select the popular priced brands.

Among your calculations on this market test, I want to know if this is a fact, from what he said, price factor and the woman shopper affects it, that the size of the can may not. Did that enter in it?

'The Witness: No, sir, because I will not sell the woman customer short on that. I think the actual woman

customer is looking at the container she buys. I don't think you will fool any one of them or kid them.

Hearing Examiner Hier: I don't mean actual deception. I mean there would be less resistance to taking six ten ounce cans for the same price, that all other beer in that place is laid out there at that price mark, although they happens to be 12 ounce cans—there is less sales resistance.

The Witness: I think so.

Hearing Examiner Hier: That is what I would think I wanted it confirmed.

The Witness: Yes.

Mr. Barton: I believe there was a pending question. I will repeat it.

By Mr. Barton:

- Q. I show you RX 125 and ask you what it is.
- (702) A. It is a memorandum from Mr. Barsi who was then the Vice President and Sales Manager of the Brewery Division, to me, asking me to make a survey on 11 ounce bottles in portions of Mr. Flanigan's region.
 - Q. Who is Mr. Flanigan?
- 'A. Mr. Flanigan is a Vice President of Anheuser-Busch and he is the Sales Manager in the mountain and Pacific Region.
- Q. Had the matter of the 11 ounce bottle which is referred to in 125 been discussed prior to the time Mr. Flanigan requested the St. Louis Sice to make this survey?
 - · A. Yes, sir.

I can say that it had been discussed on more than one occasion, because the 11 ounce bottle was a particular

competitive problem in Mr. Flanigan's region. One of the very large, very important regional competitors in the mountain and Pacific States is Coors. Coors have always marketed their beer in an 11 ounce bottle. It has always been a competitive problem in that region.

- Q. And was the 11 ounce bottle introduced!
- A. Yes, sir, we have an 11 ounce bottle in our line right now.

Mr. Barton: I offer 125.

Hearing Examiner Hier: Same objection. The objection is overruled. 125 is admitted in the record.

(The paper referred to, heretofore marked (703) Respondent's Exhibit 125, was received in evidence.)

Hearing Examiner Hier: 126 is in the same category, isn't it?

Mr. Barton: It is in the same category. It is telling the development of this story, Your Honor. I have preliminary questions, to offering 126.

Hearing Examiner Hier: All right.

By Mr. Barton:

- Q. Was there any consideration given to any other size container at about the same time?
- A. Yes, sir. Specifically, I remember consideration being given to an eight ounce bottle, and to an 11 ounce returnable bottle.
- Q. And what is the purpose of considering these other type packages, the same general problem, in other words, visibility of having a package of Budweiser that would compete price wise with these important regional brands?

A. Yes, sir. The only purpose of considering any of these new container sizes or package sizes was to meet a particular competitive situation.

Q. I show you RX 126 and ask you what it is,

A. This is a memorandum from Mr. Barsi to me, telling me to go ahead immediately with the selection of several test markets for the introduction of a ten ounce non-returnable bottle.

Q. That is dated?

(704) A. April 21, 1954.

Mr. Barton: I offer 126 in evidence.

Hearing Examiner Hier: The same objection?

Mr. Mayer: Yes.

Hearing Examiner Hier: The same ruling. 126 is admitted in the record.

(The paper referred to, heretofore marked Respondent's Exhibit 126 for identification, was received in evidence.)

By Mr. Barton:

Q. I show you 127A and B and ask you what they are.

A. This is a two page memorandium from Mr. Barsi to me, which is sort of official notice that certain new packages are now available, that the fifth, the ten ounce non-returnable bottle and the regular pack and the ten ounce returnable bottle in the four, 6-pack will be available at Newark Brewery and that the ten ounce can in a regular pack and an eight 6-pack will be available at the St. Louis Brewery.

Q. I note that you are requested to check the testing of these packages in certain selected markets with each of the regional managers involved and Mr. Garner to decide on which market in which to test packages.

Who is Mr. Garner?

A. Mr. Garner at that time was the Manager of our Food Store Sales Department with particular concern and consideration to sales in off premise outlets.

(705) Q. Why were you asked to check this with Mr. Garner?

A. These particular packages, these fifths and ten ounce packages, both the bottles and the cans were intended to be primarily competitive packages in off-premise outlets, to be competitively priced in off-premise outlets. They were intended to go through the grocery stores and especially through the supermarkets where this price competition is very important and where, unfortunately, we had a very, very small percentage of our sales volume.

Q. And the fact is that the growing area for the sales volume of boor, isn't it?

A. Very substantially growing.

Mr Barton: I offer 127A and B in evidence.

Hearing Examiner Hier: The same objection?

Mr. Mayer: Yes.

Hearing Examiner Hier: The same ruling, 127A and B admitted in evidence,

(The paper referred to, heretofore marked Respondent's Exhibit 127A and B for identication, were received in evidence.)

By Mr. Barton:

- Q. What are some of the problems that are faced in connection with the introduction of new packages in the brewing industry?
- A. There are two problems that are, I believe, particular (706) to the brewing industry. The first one is a problem of taxation. In addition to the Federal tax which exists on all malt beverages there are various State taxes. These State taxes have no uniform basis and no uniform rate. In some States the tax will be so many dollars per barrel and that tax rate will be pro-rated to any container size and package size that is marketed.

In other states the tax is per container of a certain size or smaller. Thus you have many States that specify that a tax of so many cents per case of 24, 12 ounce bottles or smaller size bottles.

That is a very definite hurdle in the introduction of a new package in those states that has such a penalty.

Now, the second thing that is peculiar to the beer business is a matter of the legality of packages. There are some States where the actual State statute that regulates the sale of malt beverages within that State specifies in the statute the size of containers that may be used.

For example, I recall that in both the State of Ohio and the State of Texas, the statute specifically says, you can use a 12 ounce bottle and would automatically raise out the use of a ten ounce bottle.

There are many other States in which the use or nonuse of a certain package size is the privilege or the assigned responsibility of the State Alcoholic Control Board, Beverage (707) Control Board, and they can by administrative decision decide which container size and

which package size may be used in that State, or may be sold in that State. And in a number of those instances, the ten ounce package has been ruled out.

So those two problems of taxation and legality of package size are the principal problems that face a brewery in introducing a new package and do not face any other kind of a manufacturer. They don't face the corn flakes manufacturer or anything of that kind.

In addition to those two specific problems, the brewer will have all of the production problems, the advertising problems, the warehousing problems, the sales and sales promotion problems that the producer of any other kind of a product would have.

The net result of it is that in the brewing industry it is going to take a considerably longer time to get new packages on the market than it would take for most any other consumer product.

- Q. I show you RX 128 A and B and C, and ask you what they are.
- A. Well, 128C is a map of the United States, on which we have designated approximately 20 major marketing centers and on which we have shown the freight costs for a case of 24-12 ounce returnable bottles of beer from St. Louis to those specific cities.
- (708) Then 128 A and 128 B constitute a list of the breweries that are located in each one of those cities where there is a brewery, a few of them that have no breweries.
- Q. What is the fact as to whether shipments are made from St. Louis, from the St. Louis Brewery of Anheuser-Busch to each of the points for which there is a freight rate on this map?

A. That is correct. We ship Budweiser regularly from St. Louis to our wholesalers and or our branches in each one of the points shown in this map.

Q. This freight that is named, that is listed here, includes the freight out as well as the freight in on the bottles as well as the freight out, does it not?

A. This includes the freight from St. Louis to the indicated city for a case of 24, 12 ounce bottles filled with beer and the freight of 24, 12 ounce empties returned to St. Louis.

Q. And how does the can -- the price for shipment of the cans compare to the price for the shipment of bottles!

A. Well, to anyone of these cities, the cost of shipping a case of 24, 12 ounce cans would be slightly less than the cost of shipping 24 12 ounce bottles because the case of cans will weigh a little bit less than the case of bottles, and you have no return freight on the case of cans.

Mr. Barton: 1 offer in evidence RX128A thru C.

Mr. Mayer: Objection.

(709) Hearing Examiner Hier: For what purpose.

Mr. Barton: Via St. Louis.

Hearing Examiner Hier: That isn't the point. What are you trying to show with this map?

Mr. Barton: Trying to show that in order to compete with Falstaff in Texas, the freight rate from St. Louis to Houston, Texas, is 37 cents, and there is no freight rate from St. Louis to customers delivered in St. Louis out of the St. Louis Brewery.

Hearing Examiner Hier: You mean by Falstaff?

Mr. Barton: Well, Falstaff has a brewery in New Orleans. They are much closer to the market with which

we are in competition with them in Texas than we are. In St. Louis we both have the same freight rate, zero.

Hearing Examiner Hier: What about Denver! You have got 39 cents. This map does not show what Falstaff has.

Mr. Barton: It has somewhat lesser rate because they have a shipment from Omaha. They have a brewery in Omaha. On this map the Omaha location of Falstaff is indicated.

In other words, Omaha is a point on the map, and the location of a Falstaff brewery at Omaha is indicated. It is quite true that we do not have the rate between New Orleans and Houston but—

By Mr. Barton:

- (710) Q. Mr. Shine, as a matter of fact, do you know what the relationship of the rate for shipment from New Orleans to Houston would be as compared to the St. Louis-Houston rate?
- A. In my judgment the rate, New Orleans to Houston on 24 twelve ounce bottles would probably be, right around 12 cents out and back.

Hearing Examiner Hier: I do not see what this has to do with this point. I let you put in the record Falstaff sales, that they have gone up consistently in Texas, Alabama and this, that and the other place. It does not make any difference why they have gone up, whether due to more advertising or more strategically located breweries or what it is. The cold hard fact is that they have gone up and you have gone down. Why enter into this record a lot of reasons why they may not have gone up.

Mr. Barton: I don't follow the remark that it does not make any difference that they have gone up because they have acquired additional breweries. The fact is that Falstaff has been able to cut into a number of areas where Anheuser Busch has been important by virtue of the acquisition of those breweries.

Hearing Examiner Hier: The important point is that they have cut in, not why they cut in. I don't see that it makes any difference. Supposing they have better salesmen.

Mr. Barton: It is our -

(711) Hearing Examiner Hier: You have been going down and they have been going up. I don't see any sense of going into all of these reasons why they have been going up and you have been going down.

The record is getting fairly voluminous.

Mr. Barton: You asked on the original motion to dismiss the question of why was this, taken in St. Louis, other than some place else. This is one answer as to why it was taken in St. Louis rather than some place else because the freight rate for a sale and deliver in St. Louis is zero, whereas the freight rate for deliver and sale in these other major marketing areas is a substantial amount. I think that in part supplies the answer to Your Honor's question of why in St. Louis.

Hearing Examiner Hier: I don't see it.

Mr. Barton: Here is the practical problem. Anheuser-Busch had the option, I think we agree, of meeting a competitive price of Falstaff in any of the area in which they did business.

In other words, they don't have to by virtue of meeting them in one place meet them every place.

Hearing Examiner Hier: No.

Mr. Barton: If they have the option of meeting them in one place, and not at the same time every place, then the problem of picking the area in which they will meet them (712) involves these questions of what is the comparative costs of freight, etc. And this map illustrates in part the scope of that problem. And I submit it goes to the further question, Your Honor, that you posed as to what is the likelihood of this happening some place else.

Hearing Examiner Hier: Don't you have the same rate as Falstaff does in Miami?

Mr. Barton: As a matter of fact — all right, we will get the figures on Falstaff shipments.

Hearing Examiner Hier: Never mind. I am just asking if you don't have the same rate. I believe you do.

Mr. Barton: The fact is you are so far as Miami is concerned—in other words, water shipment from New Orleans to Florida is possible here. I don't know the facts as to what that particular cost is. I submit to Your Honor that the problem, the possibility of there being a competitive price reduction on Budweiser in Miami, is rendered slim by the fact instead of that 56 cent freight rate.

Hearing Examiner Hier: What other objections do you have, Mr. Mayer?

Mr. Mayer: I would like to ask one question.

Hearing Examiner Hier: Go ahead.

Mr. Mayer: Mr. Shine, in the color scheme on here, are the red figures the freight out and the blue figures the freight in?

(713) The Witness: No, sir, the red figures with the dot in the front of them represent the freight, the blue figures

are merely the numbers which correspond to the numbers on the "A" and "B" parts of the exhibit.

Mr. Mayer: And the red figures contain both freight in and the freight out?

The Witness: Yes, sir. 24-12 ounce bottles always have the freight figured for both ways on the bottles.

Mr. Mayer: I have no further objection than already made. I'd like to point out to the examiner that I have been stretching my imagination here a little bit and I can't think of a single instance in the beer business anywhere in the United States that is not relevant to Mr. Barton's defense under his theory of meeting competition, absolutely nothing.

Mr. Barton: A competitive picture must be developed before the defense can be made, Your Honor.

Mr. Mayer: Under his theory he can well show in detail the competitive situation in Santa Cruz County. Arizona, in all its detail to defend himself for a price reduction in St. Louis, Missouri.

Hearing Examiner Hier: 1 told you I was going to dispose of this theoretical concept, at any rate, when you move to strike all of this evidence at the close—if you are going to—I suppose you are from the noise you are making—at the close of the Respondent's case.

(714) This motion must be taken up at the time you rest because the amount, the extent of any rebuttal will of necessity depend on whether it stays in or goes out of the record.

Mr. Barton: I understand that. I want to point out with respect to that statement by Mr. Mayer he has raised in its full form, the argument that Your Honor should take into consideration the potential involved here.

In other words, the structure of the record is such that it is — I think the Government has to concede, — the Commission has to concede there is no substantial difference in the position of any one of the St. Louis competitors today from what it would have been back in January 1954.

Your Honor has pointed out, Mr. Mayer has argued it is the potential of this action that must be considered. I submit in developing the facts on that issue, as well as the meeting competition issue, we go into some rather broad field. And I think it is clearly within Your Honor's reference to the facts that are relevant here.

Hearing Examiner Hier: In other words, one thing you are trying to establish by all of this evidence is that what happened in St. Louis can't happen anywhere else?

Mr. Barton: It is not likely to happen.

Hearing Examiner Hier: It is not likely to happen. All right. The objections are overruled. Exhibits 128-A, 128-B and 128-C are admitted in the record.

(715) (The papers referred to, heretofore marked Respondent's Exhibit 128-A, B and C for identification, were received in evidence.)

By Mr. Barton:

- Q. Based upon your study of the distribution of beer, what is the distribution pattern for the sale of beer to the ultimate consumer?
- A. Well, the distribution pattern for the sale of beer to the ultimate consumer is really a two fold pattern. First is that part of the distribution scheme that is commonly referred to as on premise consumption where a consumer or a customer enters a place of business and

buys a single unit, consumes that single unit right there on the premise where it was purchased.

The second phase of beer distribution and marketing is the off premise business where a consumer might buy one unit but more frequently they will buy six units or 12 units or 24 units in some sort of a carton or a case, carry them out of that premise to their own home or to some body elses home, to a pienic or a place of that kind for consumption; that is known as off premise consumption.

There are those two broad patterns of distribution of the ultimate consumer in the beer business.

- Q. In other words, on and off premise consumption.
- A. Yes, on and off premise consumption.
- (716) Q. What changes, if any, have taken place in the distribution pattern of beer since repeal in 1934 in connection with that problem?
- A. There have been really tremendous changes which in net amount to a complete diametric reversal of the pattern in the 21 years since repeal.

In 1934, 75 percent of all of the beer sold and produced in the United States was draft beer. 99 percent of the draft beer that is consumed is consumed on the premises where it is sold. Therefore, when we had 75 percent of the beer as draft beer we had 75 percent of the consumption of premise.

In 1954, about 25 percent of the beer that was produced and sold was draft beer. That does not mean that only 25 percent of the beer was consumed on premise, because there will be some package beer consumed on premise also. It is not a very large amount but there is some and it is possible that in 1954 that 35 percent of the

beer was consumed on premise, 65 percent consumed off premise.

So for practical purposes it is the diametric opposite

of what it had been in 1934.

Q. What is the fact with respect to the change in the distribution pattern of the beer between 1934 and 1954 with respect to distribution through grocery stores?

A. Well, in 1934 there was little or no distribution of beer through grocery stores. In the first place, we know (717) that only 25 percent of the beer that was sold was packaged beer and that is all that could have been sold because they would not sell draft beer in a grocery store and only a very small part of that packaged beer was sold through grocery stores.

At the present time there are various estimates that range over a small period of differences but general agreement is that something over 50 percent of all of the packaged beer that is consumed in the home is bought in grocery stores.

Q. Now, I take it there have been various changes in the living habits of the American people that have accounted for these marketing changes. Will you name some of them?

A. There have been very substantial changes in habits. Just to name a few of them, the automobile has caused substantial changes, television has caused even more of them.

In recent years we have heard about this great return to home living instead of out of home living and home entertainment instead of out of home entertainment. You have the substantial shift of residence from metropolitan

apartments to suburbañ ranch homes and so forth. All of these make a very substantial change in living habits.

- Q. Which have their effect upon off premise consumption?
 - A. Very definitely.

Hearing Examiner Hier: Off the record.

(Discussion off the record.)

Hearing Examiner Hier: On the record.

(718) By Mr. Barton:

- Q. Was there an effort made by Anheuser-Busch and other brewers after the repeal of prohibition to get beer into the food stores and get it, in general, classified as a food product?
- A. Yes, sir. There were very definite efforts made to get beer; to get beer sales through food stores and to get beer as a commodity to have the connotation of being a food product.
 - Q. Well, now, how was that effort undertaken?
- A. Well, there was a very deliberate effort to make the necessary changes.

To go back again for just a moment, during the 14 years of prohibition the brewing industry had sort of stood still.

'I mentioned that in 1934, 75 percent of all of the beer was draft beer.' From the figures that we have available, that is about the same percentage of total that was draft beer before prohibition. So they picked up right where they left off and during that period there had been nothing done in changes. But in other food products, in other drug production, that 14 years represented the period that is sometimes referred to by economists as the "pack-

aging revolution." That was the period when packaging really became a major item in merchandising. It is the period when the crackers left the cracker barrel and went into the box, and things of that kind.

(719) When beer was re-legalized, one of the first things that the brewing industry realized, that in order to get into this food store and to get this food connotation for beer they had to package it in a way that would be acceptable to that distributive channel. Therefore, they had to go away from the single package, the single container of a 12 ounce bottle and a quart bottle and they went into difference kinds of bottles, the non-returnable bottle. They went into the can. They had the flat top can and the cone topped can. And all of the different packaging devices. They put them into carry-out cartons of six cans, 12 cans, six bottles, and so forth, and everything possible to make it easy for the consumer to buy this packaged beer, to take it home.

In order to get this merchandise in the grocery stores, and especially into supermarkets, where mass displays are the rule, you have to have an attractive package. Price alone is not sufficient to get you all of the consideration you want in the food store in the supermarket. If you don't have a very attractive package, you cannot get a mass display. If you can't get mass display in the supermarkets, you can't get mass sales in supermarkets.

So I would say that the packaging changes, not only in the containers, but in the cartons, the cases—before prohibition, beer was always sold in a heavy, cumbersome wooden case—very shortly after prohibition the wooden cases disappeared and they were replaced by a much lighter weight (720) corrugated card board case—all to

make it easy for the customer to take beer out of the grocery store and to take it home.

- Q. You mentioned supermarkets. What effect has the growth of the supermarket had on the distribution of beer at the retail level?
- A. Well, it has had a very great effect. It is possibly a coincidence that the rise of the supermarket dates from almost the repeal date. The supermarkets really started to come along just about 1924, which was the time of repeal.

As I have mentioned in these supermarkets, you have to have attractive packaging to get your mass display space and it is in the supermarket that you can get your beer sold to the housewife. The supermarkets have had two or three basic concepts. Possibly these were given in the testimony that you heard yesterday. I was not here. But they have a price appeal. That is one of their strong points.

You have the packaging appeal, and the "one stop, one shop" idea. The woman can go to the one market and get all of her day to day needs.

I don't say that a whole lot of women would absolutely rebel at the idea, but there are still a lot of women who would resent somewhat the idea of having to go to the grocery store to get the food items there and then having to go to a butcher shop and get the meat, and then having to go to a (721) tayern or liquor store to get the hear for the family.

A certain percentage of them would just resent the idea of having to go into a tavern or liquor store. But when they can pick it up right along with the pretzels and the corn flakes and put it in the basket at the supermarket they have no objection.

So the supermarket has been a very, very important thing in this whole changing concept of beer distribution.

- Q. You have told us that the trend has been towards home consumption of beer, and that as of today something around 65 percent of the beer is consumed at home; that more than half of the packaged beer which is consumed at home is purchased through grocery stores, isn't that right?
 - A. That is substantially correct.
 - Q. Now I show RX 129 to you and ask you what it is.
- A. That is a report, a visualization of a Crossley survey made for the J. Walter Thompson Company, the advertising agency for the United States Brewers Foundation and made in April of 1949.
- Q. Who is the Crossley, who were the Crossley people who made this survey?
- A. Crossley, Inc. is a commercial marketing research organization. I would judge that it has been in operation for 20 or 25 years. It is a well recognized, well accepted company in this business, engaging in all sorts of marketing research, (722) opinion research and such.
- Q. What was the manner of making the survey which is outlined in Exhibit 129?
- A. Well, in the first place, the survey was made by what is known as the personal interview method. The field interviewers of the Crossley organization talked to some ten thousand people. Those people were distributed all over the country, New England, West Coast, Texas, Minnesota, and so forth. They were in large cities. They were in small towns. They were men. They were women. They were young people, 22 or 23 years of age. They were elderly people 60 years of age.

In other words, the entire population was represented in the sample in proper proportions on a quota basis.

Q. And what in general is the result shown in the survey insofar as off premise and on premise consumption is concerned?

A. Well, one of the charts in this survey shows that about 70 percent of all of the beer that had been consumed in the week before the survey was made was consumed off premise. That is, either in the home of the person who was interviewed or in someone else's home, or picnic or something of that sort, and that about 30 percent of it was consumed on premise, that is, in taverns or restaurants or bars.

Your Honor, I think it would be in order to mention that subsequent to the publication of this survey there was some (723) developments and questions on the technique of it and this 70 percent off premise is probably an over-stated figure. The reason for it is rather simple: The question was asked in the course of the interview: How many glasses of beer did you drink within the last week!

There is fairly good evidence that in some cases the person who answered misinterpreted the question and if they drank a 12 ounce bottle of beer they answered, "I drank one glass of beer."

But actually in compiling the results of this, they assumed, they took an arbitrary figure that each glass of beer averaged eight ounces. There is probably some ever stating on the "on premise" and understating on the "off premise." It should be something around 65 percent, with that adjustment in it.

Hearing Examiner Hier: I see on page 11, Mr. Shine, it was 62.2 percent.

The Witness: Page 11. That is the percentage, 62.2, that is who buy beer or ale for home consumption.

Hearing Examiner Hier: You are talking about — The Witness: I was talking about where they consume it.

If you will look at Page 33, you will find at the top of page a pi chart which shows that 54.8 percent of the beer reported consumed was consumed in the person's own home: (724)—16.6 was reported in other homes or non-tayerns such as picnics; and 28.6 in restaurants and tayerns.

Bu Mr. Barton:

- Q. What is the fact with respect to the percentage of packaged beer which was purchased through grocery stores according to the Crossley 1949 survey?
- A. Well, if you will broaden that definition a little bit from "Grocery stores" to "food stores", it shows that about 55 percent of the families who bought beer for home consumption, bought it at food stores.

Mr. Barton: I offer in evidence Exhibit 129.

Hearing Examiner Hier: What specific objections do you have, if any, other than the general objection?

Mr. Mayer: Obviously, we have to accept the general reputation of these particular survey people. This witness has not the basic material and it is not available to me, other than that I have the standard objection that we made to the last series of exhibits that have been offered.

Hearing Examiner Hier: It does not come up to the years in question here.

Mr. Barton: Well, Your Honor, there is a subsequent one which was made in 1954 which we are going to offer

next. There are comparisons on the development between those years. This is put in to show the picture of the general industry and the developments in the field which we consider (725) important in connection with the action that was taken in St. Louis.

Hearing Examiner Hier: A right interesting document.

Mr. Barton: We agree, your Honor.

Hearing Examiner Hier: There is a lot of material in here that does not apply to this complaint. That will be disregarded. Do you have any serious question about the approximate accuracy of this?

Mr. Mayer: No, sir.

Hearing Examiner Hier: Very well, the general objection will be overruled as they have been in the past. The document will be admitted in evidence.

(The paper referred to, heretofore marked Respondent's Exhibit 129 for identification, was received in evidence.)

By Mr. Barton:

Q. Mr. Shine, I show you RX 130 and ask you what it is.

A. It is another Crossley survey that had been made for the J. Walter Thompson Company as the advertising agency for the United States Brewers Foundation.

This one was conducted in May and June of 1954, and in its general nature it is very similar to the other survey. It encompassed some 10,000 interviews properly distributed by geographic area, by čity size, by social, economic

classification, (726) and such to be representative of the total population on a quota basis.

Hearing Examiner Hier: The same -

Mr. Mayer: Did he offer it?

Mr. Barton: Wait just a minute. I offer Exhibit

Hearing Examiner Hier: I suppose it is the same objection?

Mr. Mayer: Same objection.

Hearing Examiner Hier: The same objection. Exhibit 130 will be admitted.

(The paper referred to, heretofore marked Respondent's Exhibit 130 for identification, was received in evidence.)

Bu Mr. Barton:

Q. Now I show you RX131 and ask you what it is.

A. This is a beer report dated 1953, published by the Crowley Collier Publishing Company and the American Magazine. This is not a survey or a survey report in the ordinary sense of the word because this does not refer to a specific survey that had been made by Crowley Collier or by the American Magazine. Rather it is a collection of survey results and survey data from several sources. It refers to some of these Crossley surveys that we have just looked at. It refers to surveys that have been made by firms like the Psychological (727) Corporation, for some of the can companies; it refers to some specific information that has been released by the Alcohol Tobacco Tax Unit and so forth. It is just a compilation of data from several sources.

Hearing Examiner Hier: What does this show?

Mr. Barton: Referring -

Hearing Examiner Hier: Does it show what 129 and 130 don't show?

Mr. Barton: It is a broader — Perhaps the witness can testify, can answer. As I understood the witness' answer it is a broader base. It is a summary of all of the surveys, including one of the Crossley surveys, but it also includes surveys that have been made by the can manufacturers and by others, by newspapers and by others in the field.

Bu Mr. Barton:

- Q. Isn't that right?
- A. That is correct. The only one of the surveys so far admitted that this includes is the 1949 Crossley survey.
- Q. What is the fact as to the statement in Exhibit 131 as to the percentage of packaged beer which was sold through food stores?
- A. Well, the statement is "most packaged beer is sold in food stores" and specifically it shows that 25 percent of the packaged sales were made through greceries, 23 percent through (728) supermarkets, and six percent through delicatessens and that would add to 52 percent.
- Q. And is that in accord with your opinion based upon the available surveys made in the field, which you have examined?
- A. Yes, sir, it is my general opinion that something in excess of 50 percent of the beer that is sold for home consumption is sold through food stores.

Mr. Barton: Your Honor, the only fact to which we make reference in here is that fact. I don't have any desire to burden the record with another document. I would be satisfied that it be merely marked for identification without being received in evidence.

Hearing Examiner Hier: Is that the only fact that you are referring to?

Mr. Barton: To the percentage—it is on page 2—to the packaged beer sales in food stores, in other words, the percent of packaged beer which is sold in food stores according to the American Can Company survey of home beer consumption in 1952.

Hearing Examiner Hier: I notice over here on the next page, page 3, statistics that contradict some of the testimony that I have been listening to here that most of the beer in the home, nearly 70 percent has been bought by the husband, not by the wife in the supermarket.

Mr. Barton: That is true, Your Honor. There is (729) a survey of the Crowell Collier Company which showed that in 1950, the husband bought 69.4 percent.

By Mr. Barton:

- IQ. What does the exhibit show, Mr. Shine, with respect to a survey of the F. and M. Schaefer Brewing Company Housewife Opinion Poll conducted in 1952 by the Crossley, Inc. with respect to the percentage of purchases by the husband or the wife in cities in which apparently Schaefer was doing business?
- A. Why, I think the most significant thing that it shows is the difference by areas. For example, it shows that in New York 50 percent of the beer is purchased by the husband; in New Jersey 73 percent; in Pennsylvania

68 percent; in Connecticut, 70 percent; and in Massachusetts, 84 percent.

I think the significant thing is the difference shown in different areas.

When we consider that that particular survey was based apparently in those five States and is not a national picture, I don't believe there is any conflict with any other figures that have been mentioned here this morning.

Mr. Barton: If your Honor recalls, the evidence has gone to the purchases through supermarkets, and the price consciousness of the purchasers in the supermarkets. It does not mean that the husband does not carry the case home with him or carry the 6-pack home with him after he goes to the supermarket with his wife.

(730) And in addition, Your Honor, in some States, the law does not provide for distribution through grocery stores. That would necessarily affect any overall statistics on this question.

Hearing Examiner Hier: I am not talking about this witness' testimony. I am talking about Mr. Zimmerman.

Mr. Barton: I realize you are. And I think the fact is that we more commonly associate women with purchasing in the supermarket but the fact is that many, many men go through there also.

Also, this problem of the States in which it is not permissible to sell through grocery stores would affect statistics on that particular question.

Hearing Examiner Hier: Do you have any specific objection to this?

Mr. Mayer: No.

Hearing Examiner Hier: The general objection is overruled. Exhibit 131 is admitted in the record.

(The paper referred to, heretofore marked Respondent's Exhibit 131 for identification, was received in evidence.)

By Mr. Barton:

Q. I show you Exhibit 132, a copy of the 18th Annual Report of the New York State Liquor Authority to Governor Dewey and the Senate Assembly of New York, for 1951, and direct your attention to Page 11 and tell us whether there is anything (731) in that report which concerns the subject of on and off premise consumption.

A. Yes, sir. There are two paragraphs on page 11, which state specifically:

"In the Authority's report for 1950, we stated our intention 'to raise the standards of premises for which applications may be filed in the hope that this action will more effectively limit the number of licensed premises in which alcoholic beverages may be sold by the drink.' In order to have a factual basis to guide us, we established a moratorium on all applications for new licenses between January 23rd and March 31st, 1951, and during that period conducted a study of such pertinent data as would help us to evaluate the reaction of the rearmament program and state's civil defense needs upon the alcoholic beverage business. One of the principal conclusions from the curvey was that in most communities in the State, a number of on-premises licenses approximating local needs were in effect despite which applications were still being filed in considerable number for premises not theretofore licensed.

"Another conclusion from that study involved an economic phenomenon which has occurred in the past decade at the retail level of the industry. In was demonstrated that whereas in 1940 an estimated 65 to (732) 70 percent of liquor sales were made over the bar in premises licensed for on-premises. consumption while the remainder was sold in bottles by package liquor stores, the trend began to swing in the opposite direction and that by 1950 there had been a complete reversal. At the present time, it is estimated that between 65 and 70 percent of liquor sales are made by package stores. Beer sales during this time have followed approximately the same course and as a consequence, with about five on-premises licenses to every one package store, it is apparent that this development has done onpremises licensees a serious economic injury which has been aggravated by the increased costs of operations and increased Federal taxes."

Q. Is the finding of this Commission based upon any survey in accord with your conclusions on the matter and with other surveys which you have made and which you have seen?

A. In a general way, yes. However, it must be remembered that the findings of this report and this survey applied only to the State of New York and the situation that exists in the State of New York is not necessarily the situation that would exist in the next door State of. Connecticut or State of Pennsylvania. Where you have 70 percent in New York, you might have 40 percent in Pennsylvania and might have 80 percent in Connecticut, because the situation will vary from State to (733).

State as the State laws vary. But this is in general accord with what I would think, in my opinion, is the situation that is in the State of New York.

Mr. Barton: I offer Exhibit 132-A.

Hearing Examiner Hier: Why "A"?

Mr. Barton: I marked it 132, the whole report. I would as soon offer the whole report, except 132-A is the only page of the report on which we are relying.

Hearing Examiner Hier: Do you want the whole report, in? I will reject both of them for the simple reason, he has already read it in the record. There is no point in adding that, too.

. We will come back at 1:40 o'clock.

(Whereupon, at 12:10 o'clock, a recess was taken until 1:40 p.m., this day.)

(734)

AFTERNOON SESSION

1:40 o'clock p.m.

Hearing Examiner Hier: All right.

WILLIAM J. SHINE resumed the stand and testified further as follows:

Direct examination by Mr. Barton (resumed):

Q. Mr. Shine, up until now for the past few minutes we have been talking about the shifts in the industry, beer industry, insofar as there has been a shift from on-premise consumption to off-premise consumption of beer, and insofar as there has been a shift in the sale of the off-premise

consumed beer from taverns and that channel to grocery stores and a supermarket type of outlet.

Now, what problems, if any, has this shift in consumption of beer and the places where the beer which is consumed at home is purchased, posed for Anheuser Busch!

A. It has posed some pretty tough problems, because since repeal Anheuser-Busch has concentrated its efforts and has had its—immediately after repeal its efforts were concentrated, and ever since repeal its sales have been heavy in the on-premise type of outlet, in the tavern, in the restaurant, and other such on-premise places.

Now, with the switch to the industry sales going to (735) on-premise—to off-premise outlets, it puts Anheuser Busch in the position of being contrary to the industry trend.

I think it is a fair statement that on the average probably 65 per cent of the industry sales are off-premise sales, and probably about that same percentage figure, something in the neighborhood of 65 per cent of the Anheuser Busch business is on-premise.

Q. What is the fact as to whether or not, as this shift has taken place, the regional beers have been in a better position to take advantage of the shift and to keep up with the shifting distribution?

A. Well, they have been in a substantially better position to take advantage of a local situation than has Anheuser Busch because if a law changed or a regulation changed in a particular state, which was favorable to the sale off-premise, the localized brewer was able to take advantage of the situation, move into it right away.

It might have taken months for Anheuser Busch to get their sales policies, their promotion efforts, and so forth.

geared to take advantage of the same situation. They would be coming in there six months or a year with their efforts after the local brands had been in and more or less preempted the fields for the local brands.

- Q. Now, what do you base the estimates which you have given the Examiner as to the Anheuser Busch percentage of sales (736) through on-premise outlets and off-premise outlets on?
- A. I base that almost entirely on a survey that we made among all of our wholesalers a little over a year ago to find out just what part of their sales were being made to on-premise outlets by type and off-premise outlets by type, and then what part of the actual sale from these dual outlets was being made for on-premise consumption and off-premise consumption.
- Q. I show you RX-133-A through -N, and ask you what it is.

(The document referred to was marked Respondent's Exhibit No. 133-A through -N, for identification.)

The Witness: It is a copy of the report that I submitted to management when we completed the tabulations of the survey that we made among our wholesalers and our branches regarding all of their sales made during the month of August, 1954.

By Mr. Barton:

- Q. What was the purpose of the survey?
- A. Well, the purpose of the survey was to obtain information that otherwise is not available to us.
- As I have mentioned previously, when we sell, when Anheuser Busch sells, beer to a wholesaler that is the

end of the record that we have. Only the wholesaler knows, through his records, and we don't know through ours, to what type of outlets the wholesaler sells the beer, and to what kind of consumption it goes eventually, that is off-premise or on-premise (737) consumption.

The only way for us to get that information is to ask our wholesalers to supply it to us.

Now, to ask our wholesalers to go through that kind of a special report each month would be an imposition on our wholesalers. It would be a chore that we should not ask them to do, and we don't do it. We need that information at periodic intervals. I had been wanting to bring it up to date for some time, I had not been able to get the approval of management on it, but when we got into the sales situation that we were in in 1954, and I went to management and said, "Look, we need this information as of the current time, and especially in light of our sales position," they gave me permission to ask our wholesalers to make this special report.

After all, when we go to our wholesalers on an extensive thing of this kind which involves a good bit of work on their part, I just have to get the approval of general management to ask for such a job being done.

Q. What was the form that was sent out to the wholesalers and what instructions were given them?

A. They are attached right here at the end of this exhibit, the last three or four pages of it; the letter that went to the wholesalers, the instruction sheet, and a copy of the reporting form.

Q. You are referring to 133-K which is the letter which went (738) to the wholesalers?

A. Yes, sir.

- Q. And 133-L and -M, which are the instructions?
- A. Yes, sir.
- Q. And 133-X, which is the actual form which the wholesaler was to complete?
 - A. Was to fill in and send back to us; that is correct.
- Q. What, in general, were the results of this survey? What did you find out?
- A. Well, if you look at RX-133-C, which is the first page of tables, you will note that 16 per cent or about onesixth of the Budweiser was sold to food stores.

As I have indicated previously, we know that about onehalf of the industry volume that is sold to consumers is sold through food stores, which is a pretty clear indication of the fact that we are entirely out of step with the industry on food store sales.

Now, we also see here that 42 per cent was sold to tayerns; that 12.7 per cent was sold to restaurants, that 6.8 per cent was sold to clubs; those are all on-premise outlets.

If you put them together, you find that something in excess of 60 per cent of the Budweiser was package Budweiser, was sold to these on-premise outlets; and in total for the industry probably not more than one-third of the beer is sold through on-premise outlets, package and draft combined.

(739) Mr. Barton: Your Honor, I of a in evidence Exhibit 133-A through -N.

Hearing Examiner Hier: Are there any objections? Mr. Mayer: I still don't see any relevance to the events.

Hearing Examiner Hier: I mean, are there any special objections?

Mr. Mayer: No, sir.

Hearing Examiner Hier: Well, it is all part and parcel of the same picture, I guess.

Mr. Bart n: Yes, sir; it is. We were giving the industry picture. Now we are giving Anheuser Busch's picture.

Hearing Examiner Hier: The general objection as a continuing objection is overruled. 133-A through -N is admitted into the record.

(The document referred to, heretofore marked as Respondent's Exhibit No. 133-A through -N for identification, was received in evidence.)

By Mr. Barton:

Q. Mr. Shine, were there any other surveys made as a follow-up to your 1954 survey, which is reported in Exhibit 133-A through -N?

A. Yes, sir.

The very poor showing of Anheuser Busch sales through food stores, as shown in our survey among our wholesalers and branches (740) in 1954, led directly to a comprehensive survey of beer sales through food stores, made for us by the A. C. Nielsen Company.

Q. I show you Exhibits 134, 135-A through -G, and 136 and ask you what they are.

(The documents referred to were marked as Respondent's Exhibits Nos. 134, 135-A through -G, and 136, for identification.)

The Witness: 134 is a copy of the presentation that was made to Anheuser Busch by the A. C. Nielsen Company, which delineates in some detail in both chart and

table the findings of the Nielsen study of beer sales through grocery stores during the months of April and May of 1955.

Now, your next number, 135-A, -B, -C, and so forth---

By Mr. Barton:

Q. -A through -G.

A. Yes, sir— -A through -G are seven specific pages from this complete report.

Q. Exhibit 134?

A. 134.

And Exhibit 136 is a map on which we have outlined the boundaries of the eight areas or regions that are referred to frequently during or in the tables and charts of 134 and 135-A through -G.

Q. What were the circumstances under which this survey, which is referred to in RX-134, 135 and 136, was made, Mr. (741) Shine?

A. Well, ever since I had been with Anheuser Busch, I have been interested in getting this Nielsen type of information on Budweiser sales through grocery stores.

(742) I think that the first letter that I ever wrote to Nielsen asking if they had this service available for beer sales was probably within two or three months after I joined Anheuser-Busch. I would be in touch with them a couple of times a year to see if they had made any progress in this field.

This Nielsen information is rather expensive, and without going into detail, I will tell you that there are very few companies individually who can afford to buy the whole complete Nielsen service.

However, when several companies in a field are buying the service, so that the cost is shared, it becomes a practical matter for an individual company to buy it.

Early in 1955, I think it was probably in February, the Nielsen people in Chicago notified me that a brewer on the West Coast was interested in buying a test period Nielsen survey on West Coast information and that two brewers on the East Coast were interested in buying Nielsen information on a two-month test period basis, and that, therefore, they could now buy the national picture on a more reasonable price basis.

Well, I was personally delighted to be able to get the information, and just as soon as I got around to management people to tell them that it was now possible for us to buy it, and that I was sure that the results of this information would be valuable to us in the light of the sales situation, we were (743) facing at the time. I got immediate approval for the job.

We notified Nielsen right away that we would participate and go ahead, and the study was conducted, as I say, during the months of April and May, 1955.

Q. What is the question in which the manner of a Nielsen survey and this Nielsen survey, in particular, is conducted?

A. Well, the manner of all Nielsen surveys in the foot field, or in the grocery store field, is identical. Nielser has selected on what is know technically as a probability sample basis some 1700 grocery stores located all over the United States.

Now, those 1700 grocery stores are selected on a basis so that they will be truly representative of all the grocery stores in the country. In other words, they include haze super-markets, and they include little mama-papa grocery stores on the other side of the railroad tracks. They include chains, they include independents, big stores and little stores, that is high-volume stores, low-volume stores.

It will include stores in cities, in small towns, out in rural cross-road areas.

Now, the method of the Nielsen inventorying system is to go into each one of the selected stores every two months. Now, when they go in the first time, as in the case of this particular beer study, they inventory every store in their sample, complete inventory of every bit of beer that they have in that store by (744) brand, by package size, by container type, every bit of information.

Nielsen has arrangements completed with these storeowners and managers whereby there is an agreement that all invoices for merchandise purchased will be kept in a special locked container. When the Nielsen auditor comes back two months later, in essence what he does or at the beginning inventory, let us say, it was a thousand units on some item, the invoices show there were 5,000 units bought during the two-month period, that means there were a total of 6,000 units available for sale, he inventories the store now and he finds that there are 500 units available on inventory, therefore, they must have sold 5,500 units during that two-month period.

Now, the presentation of the material goes into more or less elaborate detail depending on the individual count, the individual category and so forth. They will present the data on a basis of a particular customer's sales, regions, or they will present the data on the basis of census regions or any way that you want it presented to be most useful to you, broken down by sales, by each type of store, by geographic area, by city size, in very great detail.

Mr. Barton: If your Honor please, I am going to proreed with some detailed questions on this survey, but pre-

ceding that, I offer it in evidence in order that those (745) questions may be asked.

I would point out that since the material upon which we are going to ask questions is contained, all of it is contained, on Exhibit 135-A through G, I will not offer 134. It was merely placed here to see the derivation of 135.

Hearing Examiner Hier: One thing I want to find our here is do you know what the explanation of closed group one and closed group two is in this?

Mr. Barton: Yes, Your Honor.

The Witness: Yes, sir.

Mr. Barton: If you want to, we can go into it now. but it will be developed.

Hearing Examiner Hier: That then means 134 is withdrawn?

Mr. Barton: That is right, Your Honor; and 135-A through G, and 136 are offered.

Has there been a ruling?

Hearing Examiner Hier: No, I am waiting for Mr. Mayer. He has not had a chance to look at it yet. Do you want some time to look at this thing!

Mr. Mayer: Yes, sir.

Hearing Examiner Hier: It is far from simple. We will take a short recess.

(A short recess was taken.)

(746) Hearing Examiner Hier: All right, go ahead Mr. Mayer: We have no objection other than our objection on the basis of relevancy.

Hearing Examiner Hier: All right. If that is the case, 135-A through G will be admitted, and 136 will be admitted, 134 being withdrawn. You may read into the record the page you are talking about.

(The documents referred to, heretofore marked Respondent's Exhibits 135-A through G and Exhibit 136 for identification, were received in evidence.)

Mr. Barton: On Exhibit 135-B and subsequent pages, there are references to closed group number one and closed group number two.

According to the Nielsen survey, closed group number one following named companies: Carling, Genesee, National, Drewry, Goebel, Pfeiffer, Duquesne, Griesedieck, Schmidt, and Jax.

Closed group number two includes the following named companies: Alt Heidelberg, Atlas Prager, Bavarian, Blitz-Weinhard, Bohemian, Burger, Canadian Act. Coors, Dawson, Esslinger, Fort Pitt, Fox Deluxe, Grain Belt, Grand Prize, Gunther, Harvard, Huedepohl, Heilman, Iron City, Leesey, Lone Star, Main-602, Meisterbrau, Naragansett, Olympia, Ortlieb, P.O.C., Pearl, Pickwick, Rainer, Red Top, Southern Select, Stag, Standard, Stroh, and Wiedeman.

(747) Hearing Examiner Hier: Mr. Barton, the only place I see that reference to closed group one and closed group two is on 135-G.

Mr. Bay. on: It is also on B, Your Honor; it is also on C—it is on B, C, and G.

By Mr. Barton:

Q. Now, Mr. Shine, I think this is a good time to go into the reasons for this closed group. Would you please explain to His Honor what the reasons were for classifying certain breweries which I have read into the record as being closed group number one, closed group number two, into designations known as and reported as closed groups one and two.

A. Our principal interest in this type of a survey by Nicisen was to obtain brand information on the national shipping brands, and a few of the important regional competitive brands like Hamms, Falstaff, and so forth.

Now, the brewers in New York, who were buying a part of this survey were interested specifically in certain brands in New York. The brewers on the West Coast who were buying a sectional part of the survey were interested in certain brands.

Now, in total, those would number maybe 20 brands. Nielsen charges for their service, for their tabulating service, on the basis of how they break them out, and each individual brand that is tabulated costs semething in the neighborhood of \$265 apiece to tabulate an individual brand. So if we had tabulated each brand name, we would have had a fabulous amount of money involved.

(748) On the other hand, we didn't want to put all of the remaining brands into one big "all other" classifications. So we broke them into—we put the ten of them into closed group one; we put 36 into closed group two, and we let all others remain in an "all others" group.

Now, the basis of selection of the brands that we put into each one of those closed groups was such that we could tell pretty well from the breakdown what brand was involved. Thus, where we have in closed group one, we have Carling. Well, now at the time that this survey was developed originally, discussed with the Nielsen people, practically all of the Carling beer was sold around Cleveland. Therefore, we knew that whatever came up in the Region in which Cleveland was located would, in all probability, be Carling beer, so we were getting a tabulation on Carling beer without having to pay for it individually.

- Q. Not meaning to interrupt you, but does that mean the composition of closed group one is such that Carling would be practically the only brewer in that Region in which Cleveland is located?
- A. It is a fair assumption that more than 90 per cent of the sales of the closed group one in that Region would be Carling.
 - Q. I see.
- A. We were getting, therefore, the benefit of a tabulation (749) of the Carling brand without having to pay for the specific brand break-out. It was strictly a dollars and cents economy measure to do it that way.
 - Q. Well, now I think-
- A. I might add one other thing: that we could not get Hamms and Falstaff in that way because Hamms spreads out more than any one of the Regions that we have for our breakdown. Falstaff spreads over considerably more than any one of the Regions we had for our break-out.

Therefore, we couldn't put Hamms in one closed group and be sure that everything we got in a certain region was Hamms because Hamms has gone over to two or three Regions and so has Falstaff.

- Q. You are particularly interested, I take it, in getting the details with respect to Falstaff and Hamms about the Regionals, among whom you are interested in getting—
- A. Yes, sir, the other Regional brands we were getting them in sufficiently satisfactory detail by putting them into the closed group.
- Q. Now with specific reference to our Ex. 135-A, are the area designations, area one through eight, the same as are shown on Exhibit 136?

A. Yes, sir; they are the same, and I think that it might be in order to further qualify one of those areas, and that is the one that is on here as area two.

(750) Q. You say "on here", what do you mean?

A. On our Ex. 136 that is the one designated as area two.

Now, area two consists of the New York State part of metropolitan New York. It does not include any of the part of metropolitan New York that is across the River in Jersey. It does not include any of the part of metropolitan New York that is up in that lower section, of Connecticut. It is merely the New York State of metropolitan New York.

I believe that all of the other areas are indicative of the map because they are all on state boundaries, but I do want to clear up that area definition of area two or of Region two.

- Q. Referring again to our Ex. 135-A, what is shown in the first column appearing thereon after the "area one", "area two" and so forth?
 - A. The first column on the left -
 - Q. That is right. Continue.
- A. Is the population column and it shows that the total population of the United States is indicated at the top of the column and is 162,600,000 on which they have based this breakdown.

Now in area one which from the map are the fixed New England States, New York, Pennsylvania and New Jersey, except or excluding that New York State part of the metropolitan New York, that area one has 19.4 per cent of that 162,000,000 (751) population: 19.4 per cent

of the total population is in area one; 6.2 per cent of the total population is in area two.

- Q. That is similar for each of the areas?
- A. Right down the list.
- Q. Now what is shown in column two of 135-A?
- A. Column two, which is headed "food-comm." is the percentage of food sales through grocery stores made in each one of the areas; in other words, area one, 21 per cent of all food stores made—food sales made through grocery stores are in area one; 6.1 per cent of all food store sales through grocery stores in area two and so forth.
 - Q. What is the top figure "6278", what does it mean?
- A. That is the total of food store sales through grocery stores for the period involved, and it means \$6,278,000.
 - Q. Isn't it -
 - A. \$6,278,000.
 - Q. Isn't it \$6,278,000,000?
- A. It might well be if they have it on an annual basis, yes. That is the total food commodity sales through grovery stores. On an annual basis it is billions.
 - Q. Billion on an annual basis.

What does the third column represent?

- A. The third column represents the total sales of beer through grocery stores broken down by these Regions. In other words, of all the beer that was sold through grocery stores (752) during April and May 1955, 16.7 per cent of it was sold through grocery stores in area one; 21.1 per cent of it was sold through grocery stores in area two.
 - Q. Yes.

Now, what is the 30,045 at the top of the column. What does that mean?

A. 30,045,000 cases of beer were sold through grocery stores during April and May and that is in terms of equivalent cases.

Neilsen actually measured the beer in terms of the actual units that were sold, so many cases of 12 bottles of 32 ounces each; so many cases of 24, 12, so many cases of 7 ounce, whatever it might be; then they were all reduced to a 288 ounce equivalent case, which would be the equivalent of a case of 24 12-ounce bottles. So it means that through grocery stores in April and May 1955, 30,045,000 24 12-ounce equivalent cases of beer were sold.

Q. That is of all brands?

Examiner Hier: Now, what is this 28.8 ounce equiva-

The Witness: Your Honor, that is a typographical error; it should be 288 ounces.

Examiner Hier: It means a full case? The Witness: Yes, sir, 24 12-ounce.

By Mr. Barton:

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Q. As I understand it, this \$30,045,000 at the top of the (753), column numbered three, that does not represent the sales in the stores surveyed but rather represents the total sales of all grocery stores, based on a projection of the stores surveyed to the total?

A. That is absolutely correct. As I said, the Neilsell sample is what is known as a probability sample; therefore, it is a sample that is fully projectable. They know that those 1700 stores and their sample represent a certain percentage of all the grocery store business. What-

ever they find in their inventorying and auditing of those stores is, therefore, projected through the total grocery store field.

- Q. Now, with respect to the third column, do I interpret it correctly that the figure 21 with respect to area two means that 21 per cent, 21.1 per cent, of all beer that was sold through grocery stores was sold through grocery stores in that area, in area two, which is the New York State part?
 - A. That is correct.
 - Q. Of the metropolitan New York?
 - A. That is correct.
- Q. Even though that area accounts for only six per cent of the population and six per cent of the sales of the food through food stores?
- A. That is correct. The grocery stores in area two as outlets for the sale of beer are far more important proportionately than they are in relation to population and total (754) food store sales.
- Q. What do the remaining columns on Exhibit 135-A represent or mean?
- A. Well, brand for brand as indicated at the top of the column, they show the sales pattern for each individual brand that is tabulated. Thus, the fourth column is the Budweiser column and it means that 20.5 per cent of all of the Budweiser that was sold through grocery stores during April and May were sold through grocery stores in area one and it means that 7.9 per cent of all the Budweiser sold through grocery stores in April and May were sold in area two. Therefore, we see that in area two which was 6 per cent of the population, 6 per cent of the food store sales, was 21 per cent of the beer sales

through grocery stores and 8 per cent of the Budweiser sales through grocery stores. Therefore, again it illustrastes the fact that Budweiser is quite different than the industry pattern again in that particular area.

- Q. What does the figure "108" at the top of the column No. 4 with relation to Budweiser mean?
- A. That means that on the basis of the projections from the sample stores surveyed 1,082,000 cases of Budweiser was sold through grocery stores during April and May 1955.
- (755) Now, your remaining columns, each one, is designated at the top of the column as of the particular brand, and your next area, you have the Schlitz figures, Pabst, Miller, Blatz, and so forth. It is possibly interesting to note some of the differences that you find as you look at these columns.

Just look at the differences between the two Ballantine columns, one for Ballantine Ale and one for Ballantine Beer.

You see that 65 per cent of the Ballantine Ale that was sold through grocery stores was sold in Area 1. And new, Area 1 is predominantly the New England states. For years that has been the traditional ale area, so they have their big share of ale sales in Area 1.

Now, Ballantine Beer has 68 per cent of its sales through grocery stores in Area 2, and only 30 per cent of its sales in Area 1, which is the ale area. You see the sectional nature of beer by those two; you also see the sectional nature of beer by Hamms and Falstaff. Look especially at the Falstaff, and you see that—

- Q. That is the last column on the page of Exhibit 125- Λ ?
- A. The last column on the right. Thirty-five per cent of all the Falstaii that is sold through grocery stores in Area 6, and in Area 6 you have 13 per cent of the population, and 12 per cent of the food store selling, and four per cent of the beer sales through grocery stores, but 35 per cent of (756) Falstaii sales through grocery stores.
- Q. What are the Budweiser sales in that area through grocery stores?
 - A. Budweiser sales are 6.2.
 - Q. And Area 6 is roughly-
 - A. The Southern states.
 - Q. In other words, Texas, Oklahoma, Arkansas?
 - A. Arkansas over to and including Alabama.

I think it is also interesting to note that at the top of the Falstaff column you see that the total Falstaff sales through grocery stores were 1,007,000 cases of beer during April and May, and Budweiser was 1,082,000 cases. Therefore, Falstaff, which, by their own admission in their annual reports and so forth, say that they do business in about one-third of the country, had almost as much sales through grocery stores as does Budweiser which operates nationally.

Hearing Examiner Hier: Let me interrupt here a moment.

Mr. Barton: Yes, sir.

Hearing Examiner Hier: Look at column — the column of Ballantine Beer.

The Witness: Yes, sir.

Hearing Examiner Hier: The bottom of that column looks like either a Chinese laundry ticket or an Einstein

formula to me. What is that zero and then above the zero the figures two, zero above the zero figure one, what does that mean there?

(757) The Witness: Well, Your Honor, each one of the segments on each one of the bars refers to over here. Now, there is some small amount of Ballantine Beer that is sold in other areas, very small.

The third area, Area 3, had 1.9 per cent of the Ballantine Beer that was sold through grocery stores, were sold in grocery stores in Area 3; 0.2 per cent of the Ballantine Beer was sold through grocery stores in Area 4.

Hearing Examiner Hier: I see.

The Witness: 0.1 in Area 5; and in 6, 7 and 8, the amount of it was less than one-tenth of one per cent.

By Mr. Barton:

- Q. Mr. Shine, what are, according to this chart, the large areas, the areas of the greatest sales for sales of beer through grocery stores?
- A. Well, if you will look at the third column from the left, the one headed "All Brands Comb." you will note that Area 2, which has 21.1 per cent, Area 4, which has 22.6 per cent, and Area 8, which has 21 per cent, so combined those three areas account for 63.7 per cent, practically two-thirds of all the beer that is sold through grocery stores, is sold through grocery stores in those three areas, 2, 4, and 8, and in those three areas by comparison in those three areas of 2, 4, and 8, you will find about 34 per cent of the Budweiser sold or about one-third of the Budweiser that is sold through grocery stores (758) is sold in those three areas where two-thirds of the industry

sales through grocery stores are made, again demonstrating our high-lighting the fact that the pattern of Budweiser sales and distribution is so frequently just the reverse of the industry pattern.

Q. What is the situation which is shown with respect to a brand like Rheingold, which is on 135B?

A. If you will look at the top of the column for the first interesting comparison, you will see that Rheingold has 2,622,000 cases of 24 12-ounce equivalents sold through grocery stores through April and May; that is roughly two and a half times as much as Budweiser sold through grocery stores.

And you will note that 86 per cent of all the Rheingold that was sold through grocery stores was sold through grocery stores in Area 2, which is the New York State section of Metropolitan New York.

In other words, Rheingold sold 86 per cent of its two and a half million cases in the area where Budweiser sold eight per cent of its million cases.

Q. What is the information that is given on page 3, on 135C?

A. 135C is from the same basic information as 135A and B, but it is expressed here in terms of percentage.

On 135C, each of the lines adds across to 100 per cent. Thus on the top line, which is marked total area, it means that Budweiser accounts for 3.6 per cent of all the beer that was (759) sold through grocery stores in April-May 1955. Incidentally, it establishes again the difference,

We know that Budweiser accounts for approximately seven per cent of the total industry sales. We account for three and a half per cent of the sales through grocery

stores. Schlitz accounts for four per cent; Miller 2.1, and so forth.

You see that the biggest single brand that is listed in here is Rheingold with 8.7, the largest individual brand. Practically nine per cent of all the beer that was sold through grocery stores during the months of April and May 1955 was Rheingold, and we have already seen on the previous chart that 86 per cent of Rheingold sales through grocery stores were made in Area 2, which is the New York State part of Metropolitan New York.

Hearing Examiner Hier: This last column, "A.O." That means all others?

The Witness: All others.

By Mr. Barton:

Q. That is apart from those that are in closed group one and two?

A. Closed group one and two, and all others, is all others except those — except the listed brands in closed groups.

Hearing Examiner Hier: Tell me this: This closed group 2 I see six brands of beer I never heard of before. What are they doing there? Main-602, what is that doing there?

(760) The Witness: Your Honor, that is a typographical error. It is not Main-602; it is Maier-102.

Hearing Examiner Hier: It is still Greek to me.

The Witness: That is a brand that is sold on the West Coast, principally in the Los Angeles Area.

Hearing Examiner Hier: Olympia is the same thing! The Witness: Olympia from the Pacific Northwest.

By Mr. Barton:

- Q. Are there any other typographical errors on there, Mr. Shine?
- A. One other that I know of. Just above, two above Main-602, it is L-e-i-s-e-y instead of L-e-e-s-e-y, which is a brand in Cleveland, Ohio.

Hearing Examiner Hier: Is this Blitz-Weinhard a West Coast beer?

The Witness: Yes, sir; it is from up in the Pacific Northwest.

(761) Hearing Examiner Hier: All right. Go on, Mr. Barton.

By Mr. Barton:

Q. Yes. What is the position of Falstaff as shown by Exhibit 135-C?

Mr. Mayer: Mr. Examiner, I submit he has explained the basis of this exhibit. We are just droning on and on.

Hearing Examiner Hier: I do not see that it is necessary for him to draw conclusions that are on the exhibit. I will sustain the objection.

Mr. Barton: Very good.

By Mr. Barton:

- Q. Referring to Exhibit 135-D, what is the meaning and how do you read that page?
- Λ. That is the exhibit that gives the data on total distribution and out-of-stock.

Now, if you will look at the first line, first horizontal line, it says, "Total max." In the Budweiser column it says, "Bottles can comb." which is an abbreviation for "combined."

Under that "combined" you have a heavy black figure of 81. It means that 81 per cent of all of the stores that handled beer handled Budweiser at some time during the two months of April and May. In other words, Budweiser distribution through grocery stores during April and May was 81 per cent.

(762) Immediately under the 81 you have a small "4" which means that on the day the Nielsen auditor was in the store 4 per cent of the stores did not have any Budweiser on stock that particular day. However, the auditor knew that they had Budweiser on stock at some time during the Λpril-May period because he had found an invoice in the box indicating they had purchased some. In other words, they were temporarily out of stock on the day the audit was made.

If you will note the Budweiser distribution of 81 per cent is very good, and any brand that can achieve an 81 per cent distribution record nationally has done a very good distribution job, and if you look down the column under the 81 and see that we have Budweiser as 85 per cent in Area 1, and 81 per cent in Area 2, and 94 per cent in Area 3—the lowest distribution they have any place in grocery stores is in Area 8 which is 72 per cent. I submit that that is a very splendid distribution record for any brand to have.

Hearing Examiner Hier: I still do not know what you mean by "combined."

The Witness: It is the combined bottles and cans.

Hearing Examiner Hier: I see.

The Witness: In other words, -

Hearing Examiner Hier: It can be one or the other or both?

The Witness: That is correct.

(763) Now, I also say that when a brand has 81 per cent distribution, as Budweiser has, and has only 3.6 per cent of the sales, that it indicates that there is no too close or too good a correlation between distribution and sales; that the brand is available for purchase, but there are not too many of the people picking it up off the shelves.

Ba Mr. Barton:

Q. How does Budweiser, referring generally to—strike that.

Referring generally to Exhibit 135-A through -G, what do they disclose with respect to a comparison of Budweiser and Falstaff as to the nature of the distribution and the nature of the sales? It is a summary question, Mr. Mayer.

Mr. Mayer: We will summarize all night. We can all conclude what the figures mean, I think. The explanation has been clear,

Mr. Barton: Won't it be helpful in the record to have it as a summary rather than to go back to the exhibit?

Hearing Examiner Hier: You are going to go back anyhow in cross-examination, I don't think the question is proper. We can all draw our conclusions, and the basic figures are here. Objection is sustained.

(The document was marked Respondent's Exhibit 137-A through -D for identification.)

By Mr. Barton:

Q. Now I show you Exhibit 137-A through -D, and ask you what (764)—they are.

A. It is a series of tables that we have developed on the basis of information that is supplied to us by Family Circle magazine showing the percentage of total beer sales by brand by certain quarters of the year made through each one of the individual warehouse locations of Safeway Stores.

Mr. Barton: Your Honor, I offer 137-A through D in evidence.

Hearing Examiner Hier: Let him have a look at it first.

Mr. Mayer: We have only the usual objection of relevancy, sir.

Hearing Examiner Hier: 138-A through -D is admitted in the record.

(The document referred to, heretofore marked for identification Respondent's Exhibit 138-A through D, was received in evidence.)

By Mr. Barton:

- Q. By Mr. Shine, how do you read 137, Exhibit 137-A through -D?
 - A. Taking 137-A as a typical example-
 - Q. Take as an example Omaha, Nebraska.
- A. Omaha, Nebraska? It will read that in the first period, which is defined at the top as the twelve weeks ending March 26, 1955, 4.9 per cent of all the beer that was sold through (765) Safeway Stores Omaha warehouse on a unit basis was Budweiser and 5.5 per cent of the beer was Schlitz, 2.5 was Pabst, 3 per cent was Miller; 26.1 was Best; 16.9 was Storz Gold Crest; 11.9 was Falstaff; 12.1 was all others.

- Q. Is that the way in which the remainder of the exhibit could be read?
- A. Yes, sir. I think that it should be mentioned, however, that on pages B and C where there are three and two columns in each year, it must be remembered that in order to get direct comparisons you have got to read the proper period columns.
- Q. In other words, the first period on each page must be read against the first period on the other page?
 - A. That is correct, in columns.
 - Q. To get a year-to-year comparison?
 - A. To get your columns.

Hearing Examiner Hier: Mr. Shine, the addition of these figures horizontally does not add up to a hundred per cent, does it?

The Witness: Not in all cases because in many cases we tabulated on here, Your Honor, only the national shipping brands that were common to all the warehouses, which were these four. The largest regional or local brands that we tabulated, and in some cases the Safeway Stores warehouse reported, only two or three individual brands, and lumped it (766) into "all others."

We were not interested again in copying off all of the detail which would have run a sheet out that long.

By Mr. Barton:

- Q. What, in general, does the exhibit show with respect to the trend of Budweiser's share of sales in Safeway Stores?
- A. In summary it shows that since the third quarter of 1953 the Budweiser share of beer sold by Safeway Stores has been declining constantly.

Hearing Examiner Hier: In summary you had satisfactory, if not excellent, coverage or diffusion, but unsatisfactory volume 1. his off-premise sale—

The Witness: Yes, sir.

Hearing Examiner Hier; (continuing)—in food stores. The Witness: Our distribution was good, our share of the sales was poor.

Mr. Barton: Which is unfortunately growing, Your Honor; the distribution through that channel is growing: it is a developing matter.

Ru Mr. Barton:

Q. Now, do you have any information on any other of the supermarket chains so far as sales of Budweiser are concerned?

A. Not very much, and not from very many.

As a general rule, the supermarkets and the grocer (767) chains are rather unwilling to give out any information on sales. It is a happenstance that this kind of information on the Safeway Stores, which is available through Family Circle magazine, which is a publication distributed through Safeway Stores, was made available to Family Circle for advertising sales purposes.

Now, once in a while you can get a little information from some other stores. Within the last tew weeks we got a little bit of information on Kroger stores, for example, in Cincinnati.

We found in the Cincinnati district of the Kroget Stores that the average sale of Budweiser was 1½ cases per store per week, and their average sale of beer was between 75 and 100 cases per store per week, so we were getting about 2 per cent of the business.

We found out from the Kroger district office in Detroit that something under 3 per cent of the money that Kroger spent to buy beer during the month of October was spent for Budweiser. If they spent 3 per cent of their money for Budweiser, it meant that about 21g per cent of the units of beer that they bought were Budweiser.

(Λ document was marked Respondent's Exhibit 138-A through -F for identification.)

Bu Mr. Barton:

Q. I show you Exhibit 138-A through -F and ask you what it (768) is.

A. These are photostatic copies of a continuing study that has been available for a number of years through the New York World-Telegram showing beer sales in the New York market.

• Q. What is the survey based on?

A. The basis of the survey is much like the technique used by Nielsen.

The New York World-Telegram has a sample of 120 stores in the New York area, and they do in those 120 stores each month practically the same thing that Nielsen does in 1700 stores every two months.

(769) They go in and take a beginning inventory, record all the purchases that have been made, subtract the ending inventory and the difference represents the sales.

Q. What is the classification by World Telegram which they include as premium beers in the New York area?

A. They have included as premium beers more brands than are generally included under such a heading. They include Blatz, Budweiser, Fox Head, Miller's High Life, Pabst, Prior, Schlitz, and Guinness Stout.

Q. Now, in general, do you read this survey in much the same manner as the Nielsen survey is read?

A. In general, yes. But I think there are some specific differences. For example, if you will look just at the May column on 138A, you will see at the top it says 94 stores, May, 120. It means that 94 stores out of the 120 in the panel had beer on hand at sometime during the month of May. That was the extent of distribution of beer by stores.

Now, in that May column, under the heading "Avg." you will read 355.7. That is the average number of units of what they call premium beer sold per store during the month of May.

Now, if you will turn to item 138-D in the May column, under "Avg." you will see 3488.9, which means that 3488.9 units of non-premium beer were sold in the average store during the month of May.

Therefore, the premium brands accounted for about 10 per (770) cent of the beer that was sold through grocery stores.

Mr. Barton: I offer 138-A through F in evidence.

Hearing Examiner Hier: Will you tell me what this exhibit shows that is not in the record already!

Mr. Barton: Well, Your Honor, it is a more specific definition of the problem. I agree, in some sense, it is cumulative, except that it is a more specific study of the New York market as distinguished from Nielsen, which was a nation-wide survey of all grocery store channels.

and it has break-outs on a number of different brands which Nielsen didn't have.

Hearing Examiner Hier: It seems to me you are just encumbering the record here. If you have to appeal this case, Mr. Barton, it is going to cost you a fortune to print up the record with all these exhibits in here.

Mr. Barton: We hope that is not the case, Your

Honor.

Hearing Examiner Hier: I understand.

Mr. Barton: But we will withdraw the exhibit.

Hearing Examiner Hier: I don't think it adds anything.

(Respondent's Exhibit 139 was marked for identification.)

By Mr. Barton:

Q. I show you Exhibit 139 and ask you what it is.

(771) A. It is a comparison of Anheuser-Busch and the industry in on-premise and off-premise sales. It is developed from two—it is a chart that is developed from two—separate exhibits, I have mentioned previously that Anheuser-Busch has 55 per cent of its package beer sold on-premise, as developed from the survey that we made among our wholesalers and branches in August of 1954.

Now, that is package beer only. We also produce draft beer. Therefore, we extend these on-premise, off-premise percentages for package beer to the right, to the middle column. We add on top the draft beer which, of course, is all on-premise consumption, giving us a total of 63 per cent of our beer sold on-premise as against 37 per cent off-premise, and in the last column at the right.

we have shown the graph based upon the Crossley survey, which shows that 38 per cent of the industry is oupremise, and 62 per cent of the industry is off-premise, again showing that the distribution pattern on-premise and off-premise of Anheuser-Busch in the industry analmost diametrically opposed.

Mr. Barton: I offer it in evidence.

Hearing Examiner Hier: Before we get to that, do you sell more draft beer in the United States than any other brewer?

The Witness: No.

Hearing Examiner Hier: You do not?

(771-A) The Witness: No.

Hearing Examiner Hier: Who leads in that respect The Witness: Your Honor, I don't know who is leading this year. The last time that I made any kind of a reliable tabulation on it, there were two breweries in New

York, local breweries in New York, that led us in sales of draft beer.

Hearing Examiner Hier: Nationally?

The Witness: Yes, sir. They sold more draft beer in the New York and their immediate draft beer area than we sold nationally.

Hearing Examiner Hier: Tell me one other thing: Have your sales of draft beer nationally been on an upward or downward trend?

The Witness: They have been on a downward trend. Hearing Examiner Hier: Since when?

The Witness: I would say since Repeal. The percentage of our total volume represented by draft beer has been going down constantly, and we are always a little bit

under the industry, a few percentage points under the industry.

Hearing Examiner Hier: Off the record.

(Discussion off the record.)

Hearing Examiner Hier: On the record.

Mr. Barton: I offer 139, Your Honor.

Hearing Examiner Hier: Anything but the usual (772) objection, Mr. Mayer?

Mr. Mayer: No, sir.

Hearing Examiner H'er: Admitted.

(The document referred to, heretofore marked Respondent's Exhibit 139 for identification, was received in evidence.)

(Respondent's Exhibit 140 was marked for identification.)

By Mr. Barton:

- Q. I show you RX-140, and ask you what it is.
- A. This is a tabulation of Anheuser-Busch package beer sales through our city sales department in St. Louis, Missouri, to on-premise outlets by months for the years 1953, 1954, and through October of 1955, showing the number of cases add to off—to on-premise outlets each month, and the percentage of our total sales represented by these sales to on-premise outlets.
- Q. What does it show with respect to the percentage of on-premise and what is left, of course, is off-premise, in relationship to the price change which took place in Badweiser in the period 1954 to 1955?
- A. Well, to summarize it quickly, it shows that in the first six months of 1953, 70 per cent was sold on-premise;

the last six months, 69 per cent was sold on-premise. As you start down 1954 by months, it is 68, 66, 65, 64, 61 and then a sudden (773) drop in June to 47 per cent. That further drop in July results in 42 per cent; it stays in the forties all the way through 1954; and at the beginning of 1955, it is up a little bit to 51; then it is back to 43, and then 53, 68, 59, 54, back to where it was—

Q. So that summarizing, during the time that Budweiser was selling at a price competitive to Falstaff, the distribution pattern was a complete change practically from that which existed prior thereto and which has existed since the prices have been readjusted.

A. Absolutely; almost again the reverse pattern.

Mr. Barton: I offer RX-140 in evidence.

Mr. Mayer: May I inquire, Mr. Examiner, concerning this exhibit?

Hearing Examiner Hier: Certainly.

Mr. Mayer: Was the answer given to Mr. Barton's question, Mr. Shine, with regard to Falstaff, based on any figures appearing on Exhibit 140?

The Witness: With regard to Falstaff?

Mr. Mayer: Yes, sir.

The Witness: No, sir.

Hearing Examiner Hier: Obviously not; there are no Falstaff figures on it.

Mr. Mayer: We have no objection to Exhibit 140. Hearing Examiner Hier: Admitted.

(774) (The document referred to, heretofore marked Respondent's Exhibit 140 for identification, was received in evidence.)

(Respondent's Exhibit 141 was marked for identification.)

By Mr. Barton:

- Q. I show you RX-141, and ask you what it is.
- A. This is a tabulation of Budweiser and Busch Lager package beer sales in St. Louis, St. Louis County, both on-premise and off-premise by months for the first six months of this year.
- (775) Q. Now, referring again to RX-140, Mr. Shine, what was the effect of the January price reduction, January, 1954 price reduction, by Budweiser in terms of effect upon this distribution pattern as to sales on-premise and off-premise outlets in St. Louis?
- A. There was practically no effect. You will note that in October, November, December, 1953, it was running 69, 70, 67 per cent; in January, 1954 it was 68, February 66, practically no change.
- Q. What, Mr. Shine, does the insignificant change of the switch from on-premise to off-premise sales in January, 1954, and the existence of a significant switch only in June of 1954 indicate?
- A. It indicates rather clearly to me that during the period January through May, when there was a small reduction in price, there was no effect in increasing our off-premise sales, and when you get a reduction to the level of Falstaff and other popular priced beers in the St. Louis market, you get a substantial increase in your off-premise sales.
- Q. Is it not a fact that the percentage of off-premise distribution in the months of June, 1954 through February, 1955 approximated the industry percentage with respect to sales to off-premise outlets?
 - A. Yes, sir; it got a lot closer to the industry pattern.

- Q. With respect to RX-141, it is a fact, is it not, that the (776) price of Budweiser was raised on March 1, 1955 to something above the price at which it had been selling prior thereto?
 - A. Yes, sir.
- Q. And in effect, Exhibit 141 shows that the distribution pattern switched immediately to a more stronger percentage through the on-premise outlets, does it not!
 - A. That is correct.

It is back almost to the same percentage that prevailed in those same months in 1953.

- Q. Now, in March of 1955 Anheuser Busch put out a new product called Busch Lager?
 - A. Yes, sir.
 - Q. It did, did it not?
 - A. Yes, sir.
- Q. And at what price was Busch Lager sold in comparison to the prices charged by Falstaff and other St. Louis beers2
- A. Busch Lager was sold at the same price as Falstaff and the other St. Louis local beers.
- Q. Referring to RX-141, what was the sales pattern with respect to on-premise and off-premise outlets in respect to Busch Lager?
- A. Well, it shows that Budweiser sales for the first six months of 1955 had 48 per cent of their volume offpremise, and Busch Lager had 73 per cent of its volume off-premise.

Hearing Examiner Hier: When did the Busch Lager go (777) out on the sales line? When did you put it out?

The Witness: March of 1955.

Hearing Examiner Hier: Is that what is known as a fighting brand or a store brand or does it have some peculiar designation in your department?

The Witness: No. sir.

It is another brand of beer manufactured by Anheuser Busch.

Hearing Examiner Hier: Is it made exclusively for off-premise —

The Witness: No, sir.

Hearing Examiner Hier (continuing): - distribution?

The Witness: No. sir.

Hearing Examiner Hier: It is not a draft beer, is it? The Witness: No, sir; not in St. Louis; no, sir. It is sold from the St. Louis brewery as a package beer.

Hearing Examiner Hier: Off the record.

(Discussion off the record.)

(778) Hearing Examiner Hier: Back on the record. If I recall, the government's case ended in March of 1955 when the price went back up again, and the rest of it is dark. Now they are starting to show what happened since then.

Mr. Barton: I offer 141 in evidence.

Hearing Examiner Hier: Same objections?

Mr. Mayer: Same objections.

Hearing Examiner Hier: Admitted.

(The paper referred to, heretofore marked for identification Respondent's Exhibit 141, was received in evidence.)

Bu Mr. Barton:

Q. I show you 142-A and B and ask you what they are,

- A. 142 A is a graph of package Budweiser package sales through the City Sales Department in St. Louis on premise and off premise outlets in terms of cases, sales to on premise outlets are indicated by the heavy, the sales to off premise outlets indicated by the ted line.
 - Yes. Now, what is 142-B?
 - . 142-B is the information on a percentage basis solid line shows the percentage of the total package sales through on premise outlets. The dotted line verbe percentage of Budweiser package beer sales in Louis, Missouri, through off premise outlets.
 - P. There is a graph—these two charts are graphic trations of the statistics that have been previously itted, are (779) they not?
 - . That is correct.
 - Ir. Barton: I offer 142-A and B in evidence, your

learing Examiner Hier: Same objection?

ir. Mayer: Yes, sir.

earing Examiner Hier: Anything additional!

r. Mayer: No. sir.

ring Examiner Hier: Admitted.

(The papers referred to, heretofore marked for identification Respondent's Exhibits 142-A and B. were received in evidence.)

Barton: This may be a good place to take a We are going into a new subject.

ring Examiner Hier: We will take five minutes short recess was taken.)

ring Examiner Hier: On the record. Go aheal

Mr. Barton: The two charts have been received, I believe. This is off the record.

Hearing Examiner Hier: I believe so.

(Off the record discussion.)

Bu Mr. Barton:

Q. Mr. Shine, I show you RX 143-A through C and

ask you what they are.

A. 143-A is a letter sent to all of our wholesalers on (750) September 21, 1955, asking for some specific information. 143-B is an explanation of how they are to provide the information wanted. And 143-C is the exporting form on which they were to fill in the information and send the form back to us in St. Louis.

Q. Now, in general, what did you request the whole-

salers to do?

A. We were asking for some very specific and very current and up-to-date pricing information from all markets at the same time so that we would have data to compare with previous information that we had obtained.

Q. Well, now, what specific information did you

request?

Hearing Examiner Hier: That exhibit shows that, doesn't it?

Mr. Barton: Yes, and I think I can get at it in another way which will be a lot faster.

Bu Mr. Barton:

Q. I show you RX 144 and ask you what it is.

A. RX 144 is a photostatic copy of the completed reporting form that was sent back to us by our whole-

saler in Fremont, Nebraska, and it is typical of the replies that came back from other wholesalers.

- Q. Now, referring to wait just a minute. I will ask my questions over here so we can look at them together. Referring to RX 144, what is the significance of the Class which is (781) contained on the form?
- A. We asked each wholesaler when he listed the brands of beer that were sold in his particular market to classify each of those brands either as a national brand, as a regional brand, or as a local brand as they were commonly known and regarded in that market.
 - Q. And then you asked him the price?

A. The price to the retailer for two packages. First, a case of 24-12-ounce returnable bottles — and I asked you to look especially that it sales less deposit. In other words, we were getting the price of the beer and not the price for the deposit on the bottle. And we also asked them to give use the prices per case for 48-12-ounce case packed 8-6. I might add there in some cases we couldn't get that information. There are some brands of beer that don't pack 48, 12-8-6. They average 24-12-4-6, in which case we doubled it to get a comparative figure.

Hearing Examiner Hier: How many wholesalers do you have?

The Witness: I'd rather answer your question by saying we have approximately 940 shipping points, place to which we ship beer to our wholesalers.

Now, in some cases one wholesaler might have several warehouses or shipping points.

Hearing Examiner Hier: Another thing I want to ask (782) you about. These 143-A through C and 144-these are in September of 1955. You had already put

out your off premise food outlet, as distinguished from tavern, brand of Busch Lager. This would impress me as getting ex post factos information after you once determined what to do with the situation.

Mr. Barton: If your Honor please, it is not the fact that Busch Lager has been put out nationally by that time. We are planning tomorrow to go into the detailed story of Busch Lager and Busch Bavarian and the only thing I will point out is the assumption that these have been put out nationally. In fact, they have been put out in selected markets and there are a number of problems connected with the markets into which they go.

Hearing Examiner Hier: All right. I'll dry up until tomorrow.

Mr. Barton: We will give you the full story.

By Mr. Barton:

- Q. Now, you say you have 918-
- A. (Interposing) 'No, sir. We have about 940 shipping points. That includes our wholesalers and branch warehouses.
- Q. Did you request each one of those shipping points to send you back a completed form similar to 144!
 - A. Yes, sir, we did.
 - Q. And how many of those did you receive back?
- A. At the time we stopped our tabulation, stopped counting (783) the mail, we had replies from about 675 of them.
- Q. And what percentage of your volume did those 575 out of 940 represent?

- A. They were by far the bigger, more reliable wholesalers. They represented at least 90 per cent of our volume.
- Q. Now, do you have all of those completed forms with you?
 - A. Yes, sir. They are right over there in a package.
 - Q. All 675 of them?
 - A. Yes, sir.
 - Q. Now, was the survey made in part at my request!
- A. Yes, sir. You asked for certain specific information. Since we were requesting information from our wholesalers, there was some additional data that we wanted to get and and we put on a few more things, and I might add that all of the information that is on this reporting form, that which we put on special and that which you asked for, is very valuable to us in our day to day conduct of the activities in my department.
 - Q. Now, I show you RX-145-A through H.

Mr. Barton: Your Honor, I offer in evidence 143-A. B and C, and 144.

Hearing Examiner Hier: Anything additional in the record or objections?

Mr. Barton: I might say, your Honor, that this goes into a different point on the case. This is moving into the point of this so-called price differential point because the (7.4) evidences that will be going in here will be designed to show, and I submit will show, that the so-called regular differential that is alleged to exist or differential between Budweiser and other national shipping beers and regional beers is in fact a quite sportly and quite sporadic matter.

Hearing Examiner Hier: Well, it is also to show what you did about the situation, that you found from all these thousands of statistics here—

Mr. Barton (Interposing): That is true, too, but it goes in on the other angle of the case, too.

Hearing Examiner Hier: Do you have anything besides the usual objection, any specific objections, I mean?

Mr. Mayer: Well, sir, in addition to questioning the relevance on any theory of price reduction or the price reduction complained of as being a test of the market situation, I can't see the relevance of what was done with the information received as a result of that price reduction as a defense to the price reduction itself.

Hearing Examiner Hier: Whether it is a defense or not we will get to later, but it seems to me it goes to the question of good faith. If these people claim that they were testing the market and they did nothing with the test when they found out the results thereof, you would be in here claiming they weren't testing the market, that they were robbing the roost. That is what you would be claiming. I know that,

(785) Mr. Mayer: That is my claim anyway, to begin with.

Hearing Examiner Hier: I know. But it seems to me that it is appropriate, in fact it is instructed, to let them show that they did test the market for a specific purpose and that they did something about it. In other words, what I gather from this so far spotty picture, they found out that they weren't getting the volume that they want. Whether they need it to keep solvent or just want to get more business is another question that hasn't been developed yet. They weren't getting the volume although they

had the coverage. It is a question of how to get it. They are going to claim, of course, that they dropped their price in what they considered to be the best area to find out if price reduction rather than can reduction would do it. Apparently they came to the conclusion it would But they don't want to change Budweiser, so they put out this — it used to be called a fighting brand or competitive brand — Busch Lager. I think it is appropriate for them to show not only that they did that but what happened when they did that. It also goes, to me, to the question of good faith. I think it is relevant on that basis.

Mr. Mayer: If the Examiner pleases, I certainly hope that Budweiser doesn't come out with another brand of beer this month because this record might never get closed, to show what they did about it as compared to what the situation was at the time they did something in St. Louis, Missouri.

(786) Hearing Examiner Hier: Well-

Mr. Barton (Interposing): All I can say, your Honor, is that the business doesn't stop because lawsuits begin

Mr. Mayer: Well, now, lawful practice or unlawfu practices.

Hearing Examiner Hier: Who, he is asking about is just the reverse of them, that lawsuits will never end it business doesn't.

Mr. Mayer: If I may say so, it reminds me of the inebriate who lost his watch down the street,

Mr. Barton: Let's take this off the record, I have heard it before.

Mr. Mayer: We will leave it here. I think it is a fair characterization. They asked him, What are you making tot? He said, I am looking for my wat. Where

did you lose it? He replied, I lost it down the street. They said, what are you looking here for? Because I've got the best light.

It is very close to the defense being presented to this Examiner.

Mr. Barton: A little levity will not harm the proceeding, your Honor.

Hearing Examiner Hier: All right. I think it is relevant as what has gone in here already, and I think it is a little bit more relevant than some of the stuff that has gone in here. I am going to overrule your objection. 145-A through H. (787) is admitted in the record. I shouldn't have said 145-A through H. I should have said 143-A through C, and 144.

(The papers referred to, heretofore marked for identification Respondent's Exhibits 143-A through C and 144, were received in evidence.)

Mr. Mayer: Mr. Examiner, may I inquire if the witness has all of the reports sent to him by wholesalers in response to the inquiry sent out in this survey with him?

Hearing Examiner Hier: He said so.

Mr. Mayer: May I have those?

The Witness: Right over there in that bundle,

Mr. Mayer: They are only putting in this one as a representative reply?

Mr. Barton: That is right. I didn't want to burden the record with 675 of them.

Bu Mr. Barton:

Q I show you RX 145-A through H and ask you what it is,

A. This is a chart illustration of the part of the information that we obtained from this special pricing survey. Specifically it shows the net, that is, without deposit, price to the retailer of 24 12-ounce returnable bottles. We have tabulated it on such a basis that we can show by the height of the vertical line — we show the Budweiser price. The small cross-lines intersecting the vertical lines at various points are designated as "R" of "L". The "R" will indicate the highest regional (788) price, the one at the top. The "R" at the bottom will indicate the lowest regional price. The "L" at the bottom, the lowest local price. Wherever there is only one "L" or "R", it indicates that there was only one regional or local price, no high nor low.

Hearing Examiner Hier: Now, the top of the line indicates Budweiser's price.

The Witness: Net price to the retailers of Budweiser in each of these cities.

Bu Mr. Barton:

- Q. I might ask you at that point, what was the nature of the basis for selection of the cities represented on RX 145 A et als?
- A. As I have mentioned, we have in that package the reports from 675 cities, 677, something in that neighborhood. If we had plotted in this manner the replies from all of those 675 cities, the piece of paper would have been as long as a roll of wallpaper. We selected three markets from each state. We made that selection on what we think is a purely objective basis. We selected first line largest market in the state. Then we arranged all of

the markets in the state in alphabetical order and we picked the first two in the alphabetical order. If one of the first two had also been the largest one, then we picked a third one in alphabetical order.

Hearing Examiner Hier: Now, wait a minute. Look [789] at 145-B. Nebraska. Omaha has the largest one, so that is first. But Fairbury and Fremont begin with "F".

The Witness: They are the first two on the list when arranged —

Hearing Examiner Hier (Interposing): You mean to tell me they haven't got a town in Nebraska whose name begins with "A", "B", "C"—

The Witness: Not where we have a wholesaler. It had to be limited to those from where we got the information.

Hearing Examiner Hier: That's right.

The Witness: Now, as you look across the first page, for example, coming across here, you see that in the first market, which is Phoenix, Arizona, the price of a case of Budweiser is \$3.70, that the highest regional is \$2.40, that the lowest regional is \$2.90, and there is a local also of \$2.90, apparently only one local price. You go over a little further to Bakersfield, California, and you find that the high regional is actually higher by ten cents than the price of Budweiser.

la Mr. Barton:

Q. Do you know who that regional is in that case.

A. Yes, sir. In that case the regional getting it hapless to be Coors, it an 11-ounce bottle.

- Q. By the way, on what basis was the "R" and the "L"—strike that. Did you take the classification, insefar as the "R" and "L" were concerned, at the wholesaler who made out the form, (790) one copy of which has been introduced here as RX 144?
- A. In general we did. There was one exception. As I mentioned when we were looking at the form, we asked the wholesalers to designate each brand as "N", a national brand, "R", a regional brand, "L", a local brand. Some of the wholesalers, for a reason which I wouldn's attempt to guss on, decided to classify brands, some of them, as "P", premium brands, and so designated them on their report. Now, that was a very few reports where it happened, but if they designated a brand merely as "P", or a premium brand, if it was a regional brand we tabulated it as a regional brand because we had no way to classify, to tabulate a premium brand.
- Q. As a matter of fact, those brands so classified by wholesalers as "P" were quite often Hamms, Coors and a number of other regional brands, were they not, as well as perhaps some others!
- A. Yes, sir. Very frequently they were. I would say probably the only case of a brand that was really a nationally distributed one and so mentioned was Ballantine Ale.

Hearing Examiner Hier: In 144 here I notice the fellow in Fremont, Nebraska, puts Falstaff down as a local beer. What did you do with that?

The Witness: We counted it as a local beet, your Honor. I mentioned when we were looking at the Jorn that we asked the wholesaler to designate the beet as it was generally (791) known and regarded in that part

ticular market. Now, this means simply that in Fremont, Nebraska, they regard Storz, Falstaff and Metz as local brands.

Mr. Barton: As a matter of fact, Falstaff has a brewery in Omaha.

The Witness: It has a brewery there and Fremont is not too far from Omaha.

Bu Mr. Barton:

Q. Now, I show you—is there any possibility that a high regional such as classified—a high regional as noted on 145-A would be a national brand such as Schlitz, Pabst, Blatz, etc.?

A. I don't think there would be a possibility of that in any case other than the one I mentioned of Ballantine Ale. It is possible that a wholesaler might have reported Ballantine Ale as being a regional brand, in who event we didn't change it if it was recorded as a regional in that market. We tabulated it as a regional. That is the only case I can think of where any brand that is distributed nationally might have been classified as a regional.

Q. I show you 146-A through H and ask you what they are. By the way, is 145A-through H in? I offer 145-A through H.

Mr. Mayer: Merely so that I understand this, Mr. Shine, returning to Exhibit 145 B and the entry opposite Fremont, the highest local price, as I understand it, reflected (792) on there would be the \$3.05 reported price on Respondent's Exhibit 144, is that correct?

The Witness: Yes.

Mr Mayer: And the lowest local price would be the \$2.50 price reported by Metz, reported for Metz?

The Witness: Yes, sir.

Hearing Examiner Hier: Wait a minute. That doesn't jibe with what I've got in front of me. 145—I've got the wrong one. All right. Go ahead.

By Mr. Barton:

- Q. In other words, the local, then, is Metz which has a price on both 144 and is so indicated on 145-B, as \$2.60.
 - A. That is correct.
- Q. And the high local is Storz which has a price on 144 and is so indicated on 145-B of \$3.05.
 - A. Correct.
- Q. And similarly, the low regional is Heilman at \$3.20, and the high regional is Hamms at \$3.25.
 - A. Correct.
 - Q. And in that market Budweiser is \$3,30.
 - A. Yes, sir.

Mr. Barton: Mr. Mayer, it seems to me that 145-A through H is simply a summarization, I mean a logical follow-up of 143 and 144.

Mr. Mayer: I have the same objection, I might add. (793) to 145.

Hearing Examiner Hier: I am going to overrule those objections and let them in the record.

(The papers referred to, heretofore marked for identification Respondent's Exhibits 145-A through H, were received in evidence.)

Bu Mr. Barton:

Q. I show you 146-A through H and ask you what they are,

A. A chart similar to the RX 145 series but this is the price to the retailer per case of 48 12-ounce cans, packed 8,6.

Q. In general this follows the same pattern as 145, doesn't it?

A. Same identical pattern.

Mr. Barton: I offer 146-A through H.

The Witness: Same thing except larger quantity.

Mr. Barton: And different package.

Hearing Examiner Hier: And different container type.

The Witness: And different container price.

Hearing Examiner Hier: All right. Admitted into the record.

(The papers referred to, heretofore marked for identification Respondent's Exhibits 146-A through H, were received in evidence.)

Mr. Mayer: Mr. Shine, does this package include oil of the returns or the returns only used in the preparation of these exhibits?

(794) The Witness: All of them.

Mr. Mayer: Thank you.

Bu Mr. Barton:

Q. I show you Exhibit 147-A, B and C, and ask you what they are,

A. It is a visualization of the fluctuations in differentials of price to retailer for Budweiser and other brands based on 1953, 1954 and 1955 prices, the 1955 price coming from this pricing survey.

- You mean when you say this pricing survey the ag survey rest ling from RX 143-A, B and C/
- .. Correct

pearing Examiner Hier: How could that be!

ar. Barton: What was the basis for the determinaat the price spread existing between Budweiser and aw local brands in 1953?

Lee Witness: That was based on a survey which had made in 1954.

1. Barton:

In April 1954? April 1954.

to Barton: Which survey, Your Honor, is not you sidence but will be placed in evidence temotron atterial was collected as a result of the sending out X-12 which was introduced in St. Louis. The ansato the survey (795) RX-12 have been given to self for the Commission. Tomorrow we will place in new a summary of those answers as an exhibit 2h another witness.

r. Barton:

Now, would you tell me, Mr. Shine, where the 1954 lation was obtained?

That was obtained from the 1954 survey.

Now, would you continue with your explanation of 117-A through C is.

Yes. To read this exhibit, let us consider RX The first line is East Hartford, Connecticut, and as in the first column of typewritten figures that in

1953 the price spread between Budweiser and the lowest priced local brand was \$1.05. In 1954 versus 1953 that price spread was up or greater than \$1.05. In 1955 that price spread was down, or less than \$1.05. And comparing again the price that did exist, the spread that did exist in 1954 with the spread that does exist in 1955, the spread is down this year.

Now, the purpose here is merely to show the fluctuations in the spread.

Hearing Examiner Hier: What does "NL" mean?

The Witness: "NL" means that no local brands reported for the market. This is just based on Budweiser and the low local brands, and "NL" means no local brands.

Hearing Examiner Hier: And "NC"?

(796) The Witness: "NC" means no change and "NF" means no figures are available.

Mr. Barton: The code legend is up in the left-hand corner of the exhibit.

I offer 147-A through C in evidence, your Honor.

Mr. Mayer: May I inquire?

Hearing Examiner Hier: Certainly.

Mr. Mayer: In the characterization of local brands, did you accept the wholesaler's characterization of what was a local brand to him as you did in the other exhibits?

The Witness: The 1954 survey asked for the price spread between Budweiser and local brands. That was the base—that 1954 survey was the base from which this was developed.

Mr. Mayer: Did they name the local brands in that survey?

The Witness: In some instances they did; not in all instances.

Mr. Mayer: If they did not name them, would you know whether it was a local or regional? You accepted their classification, I take it?

The Witness: Yes, sir.

By Mr. Barton:

- Q. As a matter of fact, Mr. Shine, how did most of the wholesalers who received RX 143-A through C classify Falstaff, Griese Dieck Western and Griese Dieck?
- (797) A. A substantial majority of the wholesalers who reported prices on those brands classified them as regional brands. There were a few —I wouldn't attempt to give any number but there were a few who classified them as locals. As I remember, they were from the places that were very close to St. Louis or very close to Omaha or very close to New Orleans where Faistaff might have had breweries.

Mr. Mayer: Usual objection, Mr. Examiner.

(798) Hearing Examiner Hier: Well, I do not think that the usual objection is tenable in this instance because this Exhibit, if I understand it correctly, goes to a dispute or a claim in the complaint that price differentials always exist between the Respondent's products and the local products.

Mr. Barton: That is right, your Honor. This Exhibit shows that a little less than the other because it is comparing with low local brands.

Hearing Examiner Hier: At any event, the objection is overruled and Exhibit 147-C is admitted in the record.

(Respondent's Exhibit 147-C was received in evidence.)

By Mr. Barton:

Q. I show you Respondent's Exhibit 148-C and ask you what it is?

A. It is an Exhibit similar to the preceding Exhibit but based on the spread between Budweiser and the highest priced regional brands.

Examiner Hier: Hold it a minute, now.

(Discussion off the record.)

The Witness: Specifically, going back to the East Hartford Connecticut market, this shows that in 1953 the price spread between Budweiser and the highest priced regional brand was 80 cents.

In 1954 there was no change in the spread.

In 1955 there was no change in the spread, compared (799) with 1953, and in 1955 there was no change in the spread compared with 1954.

By Mr. Barton:

Q. And the chart, the Exhibit, is to be read in the same manner as was RX-147-A to C, and in exactly the same manner, and NC, NL and NF were supplied exactly the same way.

Examiner Hier: Same objection?

Mr. Mayer: Yes.

Examiner Hier: Same ruling. Respondent's 148-A to C is admitted in the record.

(Respondent's document 148 A to C was admitted in evidence.)

By Mr. Barton:

Q. I show you RX 149 and ask you what it is!

A. It is a summary of the fluctuations and differentials which we have shown in detail on two preceding Exhibits.

It shows, for example, in the left hand column that there were 74 markets from which we had 1953 prices of Budweiser versus a low priced local brand.

Now, in 1954, 50 of those 74 markets that spread was up or greater. In 15 of them it was down or less and in 9 there was no change.

Now, in 1955, there were 29 markets where the spread was up or greater than it was in 1953. In 25 it was down and in three there was no change. There were 10 in 1955 and the (800) wholesalers reported there was no local brand in the market and there were seven for which, in 1955, there was no information available.

On the right-hand side we have comparable data of Budweiser versus the high-priced regional.

Q. And the bottom of the page is 1955 compared with 1954?

A. Yes.

Mr. Barton: I offer RX-149 in evidence.

Hearing Examiner Hier: The same objection!

Mr. Mayer: Yes.

Hearing Examiner Hier: Same ruling.

(Respondent's Exhibit 149 is admitted into the record.).

By Mr. Barton :

Q. Now, Mr. Shine I show you Exhibit 150 and askye what it is?

A. Well, it might be very facetious to say this is the largest Exhibit that we have to offer.

This series of charts slows the six 10-pack price to consumers. It shows it market by market. And, if you will look at the left-hand side, you have a solid line connecting several points and that solid line connects the highest prices at which Budweiser is sold in six 10-packs in the market.

Now, at the bottom you have another horizontal line (801)—connecting the lowest price at which Budweiser is sold in 6-10-packs in the market.

The small crossed lines indicate the high and low locals and regionals that were sold.

As you go across the chart, a spread between the solid lines will show that in some places there was a big spread in the price of Budweiser in the 6 10-pack within the same market.

For example, right here, in Tucson, Arizona, we see that there was a low price on Budweiser of \$1.27 for 6 10-pack and a high price of \$1.75 in the same market, while right next to that, right next to Tucson, at Safford, Arizona, there was one price, \$1.30, there is no high, no low, there is only one price of Budweiser. So, the variation in the line will show the variation in prices that existed and the spread between high and low will show the spread that exists for Budweiser within the same market.

The dash lines will show the variations in the prices of locals and regionals and how that spread over the market compared with Budweiser.

Bearing Examiner Hier: Generally speaking, the more spread, the more density of population, isn't that true!

The Witness: Your Honor, I have never attempted to summarize it on that basis. It might well be.

Mr. Barton: I offer this Exhibit.

(802) Hearing Examiner Hier: This is too big an Exhibit to expect Mr. Mayer to formulate any possible objections, if he has any now. We will take it up in the morning. I certainly would not want to check that thing in a few minutes here and I don't expect him to.

Mr. Barton: All right.

By Mr. Barton:

Q. Mr. Shine, for the purpose of the record will you please explain the significance of the legend; in other words, explain how the legend which is contained at the top of the Exhibit worked out in practice.

A. The top solid line connects the high Budweiser spread. The bottom solid line connects the low Budweiser spread.

Q. That is from market to market?

A. From market to market, if there was only one Bud weiser price in the market, then it connects both because there was no high or low.

Therefore, your line right here (indicating) or reading across from your graph, from the side, will show the lowest price at which the six 10-pack of Budweiser was sold to the consumer in that market.

This point up here (indicating) will show the highest prices at which it sold. So, the difference between that and that (indicating) is the spread that existed in [803] that market on the price of Budweiser.

Q. Yes, and the line is to the left and it is not connected with something else-

- A. It is a high regional and the low regional—
- Q. Whenever it is to the left-
- A. It is a regional brand, up here it is high regional, and down here it is low.
 - Q. And whenever it is to the right?
- Λ . It is a local brand. Here is one local (indicating) there is only one local price.
 - Q. And if it extends completely through-
 - A. The local and the regional.
 - Q. The local and the regional at the same prices?
- A. Here (indicating) you would have a high and a low local and here is a high and a low regional.
- Q. In Elko—looking at RX 150-A and looking at the line for Elko, Nevada, the line, the horizontal—the vertical line extending up from Elko, Nevada, is the line which represents the city, does it not?
 - A. Yes.
- Q. And does the line to the left of that vertical line indicate a price of a local brand?
 - A. Of a regional brand.
 - Q. I am sorry, of a regional brand.

The lowest line represents the price of the six (804) ten-pack to consumers of the lowest regional brand?

- A. The lowest price regional brand.
- Q. And the highest line extending to the left of that vertical line represents the highest price regional!
 - A. As reported in that market.
- Q. And if there is a line to the right of the vertical line, it is the lowest local?
 - A. It is the lowest local.
 - Q. And the one which is above, highest?
 - A. Highest reported for that market.

Q. And in case the line extends completely through the vertical line for the city, it represents both the regional and the local price?

A. It radicates that the price of the local and the regional is the same.

Hearing Examiner Hier: And all lines that you have been speaking of are horizontal lines on the Exhibit!

The Witness: Yes.

Mr. Barton: Except the vertical line representing the city.

Hearing Examiner Hier: Well, you mentioned that.

The Witness: And excepting the connecting lines which are generally running horizontally across the page.

Hearing Examiner Hier: What were the sub-numbers of that Exhibit?

(805) Mr. Barton: A through H. Wait a minute, that is not right---yes, H.

By Mr. Barton:

Q. I show you RX-151 and ask you what it is!

Λ. It is a visualization of the differentials of prices to retailers on the basis of Budweiser and regional brands for 1953, 1954 and 1955 on 24-12-ounce returnable bottles.

In this chart, we have plotted on the vertical line for each city listed across the bottom of the page, the amount of the differential, the dollars and cents amounts of the differential between the price of Budweiser and the price of a regional brand for a case of 24-12 onnce returnable bottle.

Hearing Examiner Hier: A regional brand, y say The Witness: A regional brand.

Hearing Examiner Hier: Which one?

(806) The Witness: In the 1954 survey.

The results were reported on the basis of the comparison between Budweiser and regional. It did not specify the individual brand. In some cases the brand was written in; in many cases it was not.

Now, we have plotted the 1953, the 1954 and the 1955 prices.

All of the 1953 points are connected with a solid line.

All of the 1954 points are connected with a dotted line.

All of the 1955 points are connected with a dashed fine.

Now, it merely is intended to show quickly and briefly the fluctuations that you have.

Looking at this line right here, you see that there are some places—

By Mr. Barton:

Q. You say "this line." Say which line.

A. This line, which is, from the legend at the side, it means the one dollar line. We see that there are one, two, three—about half a dozen markets across there where the differential is one dollar.

At this point here (indicating), it is 80 cents. You see, there are one, two three, four, five—maybe half a dozen (807)—places where the differential is 80 cents.

At this point here, which is the 60-cent line on the graph, we see that there are one, two, three, four—maybe half a dozen places where the differential is 60 cents.

We find at this point here (indicating), which is the zero line, that there were one, two, three, four, five plussix or eight places where there is no differential, and if we find one or two instances where the differential point is

below the base line or less than zero, meaning that a regional brand sells at a higher price than Budweiser.

Q. Now, this is based upon the—it was necessarily limited to the city, to the reporting points which were included in the 1954 survey?

A. That is correct.

Mr. Barton: Your Honor, I offer in evidence RX 451. Hearing Examiner Hier: I will let him look at this overnight, too.

By Mr. Barton:

Q. I show you RX-152, and ask you what it is.

A. It is summary comparison of the price of Blatz versus the price for Budweiser and regional or local brands, both for 24—12-ounce bottles, and 48—12-ounce cans.

Now, if you read this Exhibit RX-152, it means that in the State of Alabama there were two markets which reported (808) prices on Blatz beer; both of those markets reported that the price of Blatz was between Budweiser and the regionals or locals in the bottle price section.

In the canned price section, it indicated also that in two markets the price of Blatz was between Budweiser and the regionals and locals.

Q. Going down to the summary at the bottom-

A. There were 120 markets that gave us prices on Blatz and the comparison between Budweiser and/or regionals and locals, and those Blatz prices.

You look at the biggest figure and we see 69 of the Blatz prices were somewhere between Budweiser and regional. You see there are some of them where the price of Blatz was below the price of regionals and locals—

Hearing Examiner Hier: What is the significance of this testimony about Blatz?

Mr. Barton: Well, Your Honor, Blatz is allegedly—one of those that counsel has chosen to select as premium beers; he always talks about Budweiser, Miller's, Schlitz, Pabst and Blatz.

Now, then, we are showing what is happening in the marketplace in connection with one of the beers to which he has spoken, one that he has chosen to relate our prices to.

The fact is, of course, as the exhibit shows, and as the retailers who were on the stand the other day testified, (809)—that the Blatz price is in some places with the regional, in some places with the national shipping brewers. This merely describes it in more regular form.

Hearing Examiner Hier: What are you claiming with reference to Blatz?

Mr. Mayer: 1 am not making any claim with reference to Blatz.

Hearing Examiner Hier: Is it your position that Blatz is in the same boat with Schlitz, Pabst, and Miller?

Mr. Mayer: When it is priced with Schlitz, Pabst and Miller, yes, sir; when it is priced with regional, it is in the same boat as regional; and when it is priced with local, it is in the same boat as local.

Hearing Examiner Hier: Well, it seems that there are several boats that enter into that.

Mr. Mayer: Right.

Mr. Barton: Is it your position that what is happening there is—Strike that.

I offer RX-152.

Hearing Examiner Hier: Well, since Blatz seems to be somewhat over the map, and it does not seem consistent. I

think—perhaps we should take it in this record, although it is already swollen too badly.

(Respondent's Exhibit No. 152 was received in evidence.)

(810) Mr. Barton: Your Honor, this would seem to be a convenient time to quit, if you are so m'uded. I am sure that the witness' voice is getting a little husky.

Hearing Examiner Hier: All right.

We will adjourn until 9:30 in the morning.

(Whereupon, at 4:20 o'clock p.m., the hearing in the above-entitled matter was recessed, to reconvene at 9:30 o'clock a.m., Thursday, December 15, 1955.)

(811)

Thursday, December 15, 1955

Met, pursuant to recess, at 9:30 a.m.

Before: Frank Hier, Hearing Examiner.

Appearances as before.

(812)

PROCEEDINGS

Hearing Examiner Hier: On the record.

Mr. Barton: My direct examination of Mr. Shine has been completed, Your Honor.

I believe there were a couple of exhibits offered.

Hearing Examiner Hier: I want to take those up now.

Mr. Mayer, can you tell me what your reaction is to 150-A through H?

Mr. Mayer: Mr. Examiner, I have no objection to those exhibits subject to checking the information which appears thereon.

Hearing Examiner Hier: All right, Respondent's Exhibits 150-A through H is admitted in the record.

(The papers referred to, heretofore marked Respondent's Exhibits 150-A through H for identification, was received in evidence.)

Hearing Examiner Hier: What about Exhibit 151? Mr. Mayer: The same.

Hearing Examiner Hier: That is admitted in the record.

(The paper referred to, heretofore marked Respondent's Exhibit 151 for identification, was received in evidence.

Hearing Examiner Hier: You may cross examine then,

(813) WILLIAM J. SHINE resumed the stand and testified further as follows:

Cross Examination by Mr. Mayer:

- Q. Mr. Shine, directing your attention to Respondent's Exhibit 115-A, and more specifically to the years 1953, 1954, 1955, appearing on 115-D, would you tell us, sir, the price of Pabst to the retailer beginning in January of 1953 and any changes that were made subsequent to January of 1953.
- A. So far as I know, without referring to historical records, the price of Pabst to the retailer in cases of 24,

thee returnable bottles, at the beginning of 1953 was place in the general area of \$2.58.

the latter part of 1953, sometime in October, a assist to about \$3.00.

1954, early in 1954, it was reduced to about \$.75 al 1954, it was reduced to about \$2.35.

And were those two price reductions in 1954 get immediately following the Budweiser price remain 1954?

I believe that Pabst price reductions were times a matter of a few days of the Budweiser prices

Subsequent to the Budweiser price change! I believe so.

Now, sir, as the result of the reduction in price of did that make the price of Pabst and Budweiser and (\$14) in St. Louis area?

Yes. sir.

It did!

Yes.

Now, sir, examining in its entirety Respondent's 1 115 A through D, is it a fair characterization to prior to its price reduction in July or June of 1964, was maintaining about one and one-half percent stoss package beer sales in St. Louis and St. Louis

Barton: What do you mean by gross?

Mayer: No. sir.

Barton: You mean total?

Mayer: Total sales of Pabst as compared to the tes of package beer.

The Witness: For the year 1953, and for the first sx months of 1954, yes, the approximate average would be about one and one-half percent.

Ba Mr. Mayer:

Q. New, sir, in order to draw any conclusions about the application of the Paost figures, or the picture as reflected on Exhibit 115, as to what happened in the Pabst sales due to a price reduction, in order to apply any of those conclusions to what might happen to Budweiser in a different market, under a price reduction, isn't it true that we would need a somewhat similar factual situation existing before we could draw any (815) conclusion from this particular exhibit.

Mr. Barton: If Your Honor please, are you finished?

Mr. Mayer: Yes.

Mr. Barton: It is a rather long question.

Mr. Mayer: This witness is an expert, Mr. Examiner. Hearing Examiner Hier: He is an expert. You may answer.

Mr. Barton: All right.

The Witness: May I ask to have the question re-read? Hearing Examiner Hier: Yes, indeed. Read it.

(Question read by reporter.)

The Witness: I think I could answer that question, yes, and no, and very justifiably so.

Yes, you would need similar conditions if you wanted to draw exactly comparable situations. You would not have to have exactly similar situations if you merely wanted to generalize from the results.

In Mr Mayer:

Q. Is it of any significance to you, sir, that Budwelse dropped its price first in the St. Louis area?

Mr. Barton: With respect to what!

Mr. Mayer: With respect to the conclusion which we drew from this exhibit on the direct examination.

Heaving Examiner Hier: What was that!

(816) Mr. Barton: Which was what!

Mr. Mayer: That Budweiser might not do as well if this was not done elsewhere because Pabst did not do as well in St. Louis when this was done. The witness test fied to that yesterday.

The Witness: No, sir, I don't think it would make any difference which brand reduced the price first when both brands reduced their price within a few days of each other.

Hearing Examiner Hier: Are all of these national so-called national brands such as Pabst and Schlitz and Miller, Blatz, having the same problem as Budweiser is having about off premise sales?

The Witness: I believe that in general it could be said that they are having comparable problems. It would vary substantially from one market to another but in general ever thing, the same comparable problems.

Hearing Examiner Hier: Insufficient volume through food outlets and other off premise outlets not connected with the sale of liquor?

The Witness: Yes.

Hearing Examiner Hier: By the way, who got the business when the National Breweries were struck in Milwaukee in the fall of 1953? I assumed that Pabst

William J. Shine for Responsibility of the

Schitz, Milier, and so on, were very nearly unobtainable in St. Louis County. Who got that business down there, the local—the regional (\$17) breweries in St. Louis or Ameuser Busch, split up among them, or what happened

The Witness: I think it was fairf well spread.

Heaving Examiner Hier: I supposed the figures are in the record about Anheuser-Busch sales trend during 1953, but I don't know about the others:

The Witness: Yes, sir.

Hearing Examiner Hier: Go ahead.

Bu Mr. Maner:

- Q. Directing your attention now, sir, to Respondent's Exhibit 119, and Respondent Exhibit 120, first of all, sir, neither of these two exhibits represent the total advertising expenditures of any of the companies appearing thereon, does it?
- A. That is correct. It represents their expenditures in these four principal media.
- Q. Neither one include point of sale advertising, do they, sir?
 - A. No. sir.
- Q. And on the two exhibits, am I correct now in stating that as far as the figures, with relation to Anheuser-Busch are in the possession, or are in your possession?
 - A. Me personally?
 - Q. No, sir, your company's possession.
 - A. Yes sir, correct.
- (818) Q. Now, sir, in 1954, did Anheuser-Busch engage in national advertising on television?
 - A. No, sir.
 - Q. It did not?

- A. No. sir.
- Q. What does the item four thousand on Respondent's Exhibit 120-A opposite the year 1954, for Anheuser Busch, in Washington, D. C.—what expenditure or what type of advertising does the \$4,341 represent in the television column?
- A. I am not absolutely sure on the detail of the point, but my judgment is that it might represent some local or spot use of television in the Washington market. The column headings indicate for radio and television, it is both network and non-network which would include any spot, where they might have both announcements or pregrams of the single station in the single market.
- Q. Now, sir, is that the direct cost to Anheuser-Busch?
 - A. Yes, sir.
- Q. Dropping down to Gunther, the next entry for the year 1953 in the same column, \$173,000.

Do you know what that entails?

- A. That is the information that was supplied to our advertising agency by the television stations in Washington, D. C., as to the amount of money invested by Gunther in television advertising on those stations during the year 1953.
- (819) Q. Would that include any combination program, for instance, in which the wholesaler bears part of the expense?
 - 1. It might.
- Q. But this figures, \$173,000, to your knowledge in cludes only the Gunther Brewing Company portion of the cost of the program?
 - A., No, sir, not to my knowledge.

- Q. Now, sir, Mr. Shine, if we might turn to Respondent's Exhibit 14-A, do you have a copy of that, sir?
 - A. Yes, I have now.
- Q. Mr. Shine, do these wholesaler sales to retailers, as indicated on this particular exhibit, does that include the sales by Budweiser through its wholly owned distributors?
 - A, Yes, sir.
 - Q. It does?
 - A. Yes, sir.
- Q. In other words, it includes all of the sales of Budweiser wholesale sales to retailers?
 - A. That is correct.
- Q. Now, sir, directing your attention to Respondent's Exhibit 122, would you take each and every brand, sir, located on that particular exhibit, and directing our attention specifically to the years 1953 and 1954, state for me the prices of each and every one of those brands individually, first to the wholesaler?
 - (820) A. I do not know.
- Q. All right, sir. Now, do you have the prices of each and every one of those individual brands for 1953 and 1954, to the retailer?
 - A. No. sir.
- Q. Now, sir, do you have the prices of each and every one of those individual brands for those years to the consumer?
 - A. No. sir.

Hearing Examiner Hier: Was Budweiser higher or lower than the majority of them?

The Witness: Well, the reasons I can't answer the puestion, Your Honor, is because there is no such thing

as a uniform price throughout a State. These are figures on beer sales in the entire State of Texas. There is a such thing as a price to the retailer or to the consumer State-wide uniformly.

Hearing Examiner Hier: Let us take Houston.

The Witness: I could get them. I do not have them I could get them.

Hearing Examiner Hier: All right.

By Mr. Mayer:

- Q. Mr. Shine, with regard to the Texas situation as you described it yesterday, did you ever recommend to the management of your Company that it reduce its price in Texas?
- A. Did I ever recommend that to the management of the company? (821) No. sir.
- Q. Do you know whether or not it was ever recommended by anyone to the management that it reduce its price?
 - A. I do not know.
- Q. Is there anybody in your organization who would know the answer to that?
 - A. Not to my knowledge.
- Q. In your position do you make specific recommendations after analyzing markets as to what you think should be done in a particular situation?
 - A. In relation to price?
- Q. In relation to anything, whatever you think the situation demands, sir?
 - A. I do in my present position, yes, sir.
- Q. Were you in a position to make recommendations in 1953 and 1954?

- A. No, sir.
- Q. You were not?
- A. No.
- Q. Who would make the recommendations that you are now making, sir, to the company?
- A. There was no such position in the company in 1953 or 1954.
- Q. In 1953 and 1954, then, your work was primarily just for information? You made no specific recommendations as to what you thought should be done in specific markets; is that (822) correct, sir?
- A. I would make recommendations as to what should be done in certain markets but the area of my responsibility at that time was not in connection with pricing.
- Q. Did you make any recommendations with regard to the Texas market?
 - A. No, sir.
 - Q. You did not.

Hearing Examiner Hier: Do you know whether or not Texas was ever under consideration as a testing ground, as a testing area?

The Witness: Well, I think, Your Honor, that every market in the country at sometime or another has been under consideration. Whether it got beyond preliminary consideration and up to final choice of either this one or that one, I don't know.

Hearing Examiner Hier: Who do you furnish your information to and to whom do you make recommendations? Mr. Barsi or Mr. Gontard or who?

The Witness: When they were with the Company some of my recommendations would be made to them, yes, sir. At the present time some of the recommen-

dations would be made to Mr. Koalseth or Mr. Meyer, Mr. Busch. There is no one uniform management position to which I make recommendations.

139 Mr. Mayer:

- (\$23) Q. Mr. Shine, directing your attention, sir, to Respondent's Exhibit 137-A in the left hand column, which is headed "Warehouse Locations", that would indicate any of the Safeway stores, any of the Safeway stores in that general area being served by that individual warehouse, is that correct?
 - A. That is correct.
- Q. And it would not show how many individual Safeway stores there are being served in any of those areas!
 - A. No, sir.
- Q. Now, sir, looking at Respondent's Exhibit 140, it you would, sir: First, I don't think it is too clear to use and I don't recall this, is this limited to package goods!
- A. Yes, sir, it is headed "cases", the columns are headed "cases."
- Q. Now, sir, do you know what the on premise sales of packaged goods of Falstaff was in 1953?
 - A. No, sir.
 - Q. Do you know what they were in 1954?
 - A. No, sir.
 - Q. And in 1955?
 - A. No. sir.
- Q. Now, sir, directing your attention to Respondent's Exhibits 145 and 146, and particularly to 145—I know this may be a little tedious. Do you have all of the basic information with you from which this information was withdrawn?

- (824) A. In that little bundle.
- Q. Is it in such an order that you could without too much delay pick out any particular price on this exhibit about which you are questioned?
 - A. Yes, sir.
 - Q. All right, sir.

Now, sir, starting on Respondent's Exhibit 145-A, and proceeding from left to right, sir, would you first—and we will take as an example, the first indication would be the Bakersfield market to which my question is directed. Would you proceed to take every market in which the regional beer is priced the same as or above Budweiser, name that regional beer for me, sir, state the two prices to the retailer, and state the prices to the consumer?

A. The first market that you asked about is Bakersfield, California. The price to the retailer of Budweiser is \$3.35 per case of 24, 12 ounce returnable bottles. The price of the highest priced regional brand is reported on the reporting form right here as Coors, at \$3.47.

Q. Before you leave that, Mr. Shine, the question was also directed to the price to the consumer of both of those beers.

A. The price to the consumer on Budweiser for a spack of 12 ounce cans varies from \$1.20 to \$1.35.

The price to the consumer of Coors varies from \$1.23 to \$1.42.

- (\$25) Q. Is there no price for 24 cans case of 12 sunce returnable bottles to the consumer?
 - A. No.
- Q. Is that package offered in that area by Budweiser!

Mr. Barton: You mean the 24?

Mr. Mayer: Yes.

The Witness: Offered, yes, sir.

By Mr. Mayer:

Q. Does that particular wholesaler reporting buy that particular package?

A. I don't know without referring to the sales record-

Mr. Barton: You mean the 24, 12 ounce?

Mr. Mayer: Returnable bottle.

The Witness: I would not know without referring to the specific records.

Mr. Mayer: All right, sir.

Mr. Barton: The form does not realize for the consumer price of 24, 12 ounce bottles as distinguished from the 6-pack. You realize that, Mr. Mayer?

Mr. Mayer: Yes.

The Witness: The next market is Blythe, California. The reported price to the retailer for Budweiser per case of 24, 12 ounce returnable bottles is \$3.45. The reported price for Coors is \$3.55. The price to the consumer for Budweiser is \$1.35. The price to the consumer for Coors is \$1.35.

(826) By Mr. Mayer:

- Q. Is that the unit gain of the 6-pack?
- A. Yes, sir. The 6-pack of 12 ounce cans.
- Q. Do you have any information regarding the over the bar price of individual sales of Coors and Budweiser
 - A. Yes, sir.
 - Q. What is that, sir?
- A. The price for 12 ounce container sold on premisover the bar of Budweiser is 35 cents, and Coors is 35 cents

Mr. Barton: Is that in Blythe?

Mr. Mayer: That is in Blythe, California.

The Witness: Mr. Mayer, may I ask what is the next market you want the information for.

By Mr. Mayer:

Q. It would appear to be Glennwood, Colorade.

A. Glennwood Springs, Colorado, the price of Budweiser to the retailer per case of 24, 12 ounce returnable bottles, is \$3.75. The price to the retailer per case of 24, 12 ounce returnable bottles for the highest priced regional brand is Hamms at \$3.75.

The price to the consumer for a 6-pack of 12 ounce cans, Budweiser, varies from \$1.25 to \$1.50. The price of Hamms per 6-pack of 12 ounce cans varies from \$1.25 to \$1.50. The price to the consumer on premise over the bar, 12 ounce container on Budweiser, 30 and 35 cents; for Hamms, 30 and (827) 35 cents.

- Q. Does that wholesaler report Coors on that exhibit, sir!
 - A. Yes, sir.
- Q. What are the Coors prices in Gleanwood Springs, Colorado?
 - A. At which level?
 - Q. At all levels.
- A. Coors' price to the retailer as reported per case of 24, 12 ounce returnable bottles is \$3.25. The price to the consumer for 6-pack of 12 ounce cans varies from \$1.15 to \$1.25. The price of Coors on premise is 25 and 30 cents.

May I ask what is the next market?

- Q. Anaconda, Montana.
- A. Anaconda, Montana, the price to the retailer per case of 24, 12 ounce returnable bottles, Budweiser, \$3.59. The highest price regional brand, Hamms, \$3.59.

The price to the consumer for Budweiser in the 6-pack of 12 ounce cans varies from \$1.17 to \$1.80. The price to the consumer for Hamms is not listed on the report.

The price of Budweiser over the bar, 12 ounce containers, 30 cents; Hamms 30 cents.

- Q. Would you identify for us, sir, the low regional price beer in Anaconda, the lowest priced beer to the retailer?
- A. The lowest regional priced beer there are two at the same price, Braumeister and Lucky Lager at \$2.65.

Mr. Barton: The next one, I think is Las Vegas (828) under that general classification. That is in Nevada.

The Witness: Is Las Vegas, Nevada, the next one you want?

Mr. Mayer: I want to stay with Anaconda, Montana. for a moment.

By Mr. Mayer:

Q. Directing your attention to Respondent's Exhibit 146-A on which Anaconda, Montana, appears, it shows a regional priced beer.

Let's take, or let's ask this question: What is the highest priced regional beer to the retailer in Anaconda for 1948, 12 ounce cans of 8, 6-pack?

- A. The highest priced regional brand is reported as Hamms at \$7.85.
 - Q. Does it list a retail price for Hamms, sir?
- A. Not to the consumer. It lists the retail price ever the bar, but does not list any off premise price.
 - Q. Now, sir, Las Vegas, Nevada, please.

A. Las Vegas, Nevada, the price of Budweiser to the retailer per case of 24, 12 ounce returnable bottles, is listed as \$3.55.

The price to the consumer per 6-pack, 12 ounce cans, Budweiser, varies from \$1.15 to \$1.86.

The price of Coors varies from \$1.15 to \$1.80.

The price of Budweiser over the bar per 12 ounce container varies from 30 cents to 50 cents. The price of Coors (829) over the bar per 12 ounce container varies from 30 cents to 50 cents.

Q. Now, sir, Salt Lake City, Utah.

A. Salt Lake City, Utah, the price of Budweiser is \$3.19. The price of Coors is \$3.25.

The price of Budweiser to the consumer, 99 cents to \$1.05; Coors, \$1.09.

To the consumer on premise, Budweiser, 25 cents to 40 cents; Coors, 25 cents to 30 cents.

- Q. Now, sir, would you identify for me before leaving Salt Lake City, Mr. Shine, the name of the lowest priced regional beer?
- A. The lowest priced regional beer, two brands of identical prices, Lucky Lager and Eastside at \$2.13.

Mr. Barton: Eastside is the Pabst brand, isn't it?

The Witness: It is manufactured by the Pabst Brewing Company.

By Mr. Mayer:

- Q. Well, now, is Eastside is a beer manufactured by Palst but priced differently from Palst Blue Ribbon to the retailer?
 - A. Yes, sir.
 - Q. Is it generally priced lower?

J. Shine, for Respondent-Cross

that a price competing beer that Palst

ould you call it what?
competing beer?
id I don't understand that term.
is all right.

aps I have overlooked one of the fundahere, but on your Exhibit 145-A, sir, in and corner, describing the various symexhibit, would you tell me when the lists ands, what those brands are?

Wait a minute.

Ie is an expert here. If he can answer can't, he won't, seed any help at all.

The brand will vary from market to

vords, was a regional beer appearing, random on exhibit as of Phoenix, Ariw up as a local beer in, well, Billingsley.

irely possible?

n't any real consistent definition as 10 beer on this exhibit, and what is a local t?

, there is a consistent definition.

- Q. Whose definition is it, sir?
- A. Each wholesaler reported and designated brands as they were generally regarded in that particular market.
- Q. I am sorry. The description as to whether it is regional or local was made by the wholesaler reporting.
 - A. As it applies to his particular market.
 - Q. How many reported?
 - A. 675, I believe, in the tabulation.
- Q. Now, Mr. Shine, on the high and low cross lines, is that merely the description of when "R" appears at the top, and then "R" appears at the bottom that that is the high regional in one instance and the low regional in the other?
 - A. Yes, sir.
- Q. Now, sir, would you give us the information with regard to Cedar City, Utah?
- A. In Cedar City, Utah, the price of Budweiser to the retailer, \$3.19; Coors, \$3.30.

The price of Budweiser to the consumer, 6-pack, six for \$1.09; Coors, six for \$1.39.

The price to the consumer on premise, over the bar, Budweiser, 25 and 30 cents; Coors 30 cents.

- Q. What is the low regional beer appearing on the exhibit?
- A. The low regional beer price to the retailer is Lucky (832) Lager.
 - Q. Now, sir, proceeding to Cheyenne, Wyoming.
- A. The price to the consumer in the case of 24, 12 curve returnable bottles—
 - Q. Do you mean consumer?
- A. The price to the retailer, pardon me, 24 per case of 12 ounce returnable bottles, Budweiser, \$3.50; Ballantine Ale, \$3.90.

- Q. Is there a beer listed there as regional priced beer in Cheyenne, Wyoming, at a higher price than Budweiser?
- A. Will you ask that question will you repeat that question?
- Q. Does your report show a beer being sold to the retailer in 24, 12 ounce returnable bottles in Cheyenne, Wyoming, at a price higher than the price that Budweiser is being sold to the retailer?
- A. You mean a beer as distinguished from Ballantine Ale?
 - Q. Yes, sir.
- A. No, there is not. Now, the price to the consumer off premise for 6-pack of 12 ounce cans Budweiser, \$1.25. Ballantine Ale, \$1.32.

The price to the consumer on premise for 12 ounce container over the bar, Budweiser, 30 cents; Ballantine Ale, 30 cents.

- Q. Would you give us the information with regard to (833) Burlington, Iowa?
- A. Burlington, Iowa, the price to the retailer per case of 24, 12 ounce returnable bottles, Budweiser, \$3.35; Hamms, \$3.35.

The price to the consumer, off premise, for 6-pack of 12 ounce cans, Budweiser, varies from \$1.10 to \$1.20. Hamms varies from \$1.10 to \$1.20.

The price to the consumer on premise, 12 ounce container over the bar, Budweiser, 25 and 30 cents; Hamms 25 and 30 cents.

- Q. What is the low regional beer in that area?
- A. The low regional beer in its price to the retailer, there are two brands listed at the same price: Falstaff and Griesedieck, \$2.75.

Q. All right, sir.

Now, sir, proceeding to Burlington Junction, Missouri.

A. Burlington Junction, Missouri: The price of Budweiser to the retailer per case of 24, 12 ounce returnable bottles, \$3.17. The price of Hamms to the retailer is \$3.15.

The price of Budweiser off premise to the consumer for 6-pack of 12 ounce cans, varies from \$1.05 to \$1.20.

The price of Hamms, \$1.20.

The price of Budweiser on premise over the bar for 12 ounce container is 22 to 25 cents. The price of Hamms is 25 cents.

- (834) Q. All right, sir. Now moving on, would you give us the information with regard to the Omaha, Nebraska market?
- A. In Omaha, Nebraska, the price on the retailer per case of 24, 12 ounce returnable bottles, Budweiser, \$3.30. Old Style, \$3.30.

The price to the consumer off premise, 6-pack of 12 conce cans, Budweiser, \$1.05 to \$1.15. Old Style from \$1.05 to \$1.15.

The price to the consumer on premise for 12 ounce container over the bar, Budweiser, 25 cents to 35 cents; Old Sty 25 cents to 35 cents.

- Q. A. o is the manufacturer of Old Style, Mr. Shine?
- A. I believe that it is manufactured by Heilman in Wisconsin.
- Q. Do you find it in many markets under that name "Old Style"?
- A. So far as I know, but I am not positive of it. As far as I know it is the only brand that Heilman produces. I am not sure of that but that is the only one I know of they produce.

- Q. Would you identify the lowest local priced beto the retailer in Omaha?
- A. There are two at the same price: Metz and Star. Triumpheat \$2.50 to the retailer. I am sorry, tilliant three. Falstaff at \$2.50.
- Q. Now, sir, would you proceed to Fairbury, No., braska!
 - (835) A. Nebraska!
 - Q. Yes, sir.
- A. The price of to the retailer per case of 24, 1, ounce returnable bottles, Budweiser, \$3.25; Hamms, \$3.25.

The price to the consumer off premises 6-pack of 1, ounce cans., Budweiser, \$1.15 and \$1.20; Hamms, \$1.5 and \$1.20.

The price to the consumer on premise per 12 ounce container over the bar, Budweiser, 25 cents; Hamms 25 cents.

- Q. And is the Falstaff price reported there, sir?
- A. No. sir.
- Q. Now, sir, Tulsa, Oklahoma, if you will, sir.

Mr. Barton: Which one are you on now?

Mr. Mayer: That is 145-C.

The Witness: In Tulsa, Oklahoma, the price to the retailer per case of 24, 12 ounce returnable bottles, Budweiser, \$4.10, Carlings Ale, \$4.10.

The price to the consumer off premise for 6-pack of 12 ounce cans, Budweiser, varies \$1.33 to \$1.80. Carling Me varies from \$1.33 to \$1.80.

The price to the consumer on premise, 12 onnce container, over the bar, Budweiser, 30 and 35 cents; Carling-Ale, 30 and 35 cents.

Bu Mr. Mager:

- Q. What is the highest priced beer sold to the retailer in (836), the 24, 12 sunce returnable bottle in Tulsa, oklahoma?
 - A. Budweiser, \$4.10.
 - . Q. And what is the next highest priced beer?
- · A. There are four brands: Falstaff, Stag, Griesedeck Brothers and Jax at \$3.41.
- Q. All right, sir.

Now, Mr. Shine, if you will, wilk you go to Bartlesville, Oklahoma.

A. The price to the retailer per case of 24, 12 ounce returnable bottles, Budweiser, \$4.09; Hamms \$4.09.

The price to the consumer off premise, 6-pack of 12 ounce cans, Budweiser, from \$1.25 to \$1.45; Hamms from \$1.30 to \$1.45.

The price to the consumer on premise per 12 ounce container over the bar, Budweiser, 25 to 30 cents; Hamms, 25 to 30 cents.

- Q. On seeking this information, Mr. Shine, have you ever made any analysis, for instance, with relation to the last report as to the number of outlets at which Budweiser is priced at 25 cents and at which Budweiser is priced at 30 cents?
- A. No, sir, I have not completed the analysis of that kind on this report. I can assure you that it will be done in the regular course of business, but we have not yet done it.
- Q. Now, sir, the information regarding East Chicago, Indiana. That is on Exhibit 145-D, sir.

(837) A. In East Chicago, Indiana, the price to the retailer per case of 24, 12-ounce returnable bottles, Bucweiser, \$3.60; Hamms, \$3.60.

The price to the consumer off of premise for six poor of 12-ounce cans, Budweiser varies from \$1.15 to \$1.5 Hamms from \$1.15 to \$1.30.

The price to the consumer on premise, 12-ounce on tainers over the bar, Budweiser 25 to 35 cents; Hamms 25 to 35 cents.

- Q. Now, sir, would you give us the same information with regard to Madison, Wisconsin!
- A. The price to the retailer per case of 24, 12-ound returnable bottles, Budweiser, \$3.20; Old Style, \$3.20.

The price to the consumer off premise, six pack 12ounce cans, Budweiser, \$1.15 to \$1.25. The others are not identified. I would presume, the way the form is prepared, that they are the same, but they are not so identified.

Budweiser price to consumer on premise per 12-ounce container over the bar 25 and 30 cents. The others are not identified, but I would presume from the way the report is completed that they would be the same.

- Q. Now, sir, would you give us the same information with regard to Appleton, Wisconsin?
- A. Appleton, Wisconsin; price to retailer per case of 24, 12-ounce returnable bottles, Budweiser, \$3.20; Heileman's \$3.20. And Hamms, \$3.20.
- (838) Price to the consumer off premise for six pack 12-ounce cans, Budweiser from 99 cents to \$1.20; Hamms from 99 cents to \$1.20; Heileman's from 99 cents to \$1.20.

The price to the consumer on premise, 12-ounce container over the bar, Budweiser 25 to 35 cents; Hamms 25 to 35 cents; Heileman's 25 to 35 cents.

- Q. You were speaking about Heileman's then. That was Old Style, was it not?
 - A. Listed on the report as "Heileman's."
 - Q. Is that the same as "Old Style"?
- A. I would not know. It is listed on the report as "Heileman's"."
- Q. Now, sir, directing your attention to Respondent's Exhibit 145-E, in particular to Knoxville, Tennessee, market, would you give us the information regarding that, sir!
- A. Knoxville, Tennessee. Price to the retailer per case of 24, 12-ounce returnable bottles, Budweiser, \$4.40. Ballantine \$4.40.

Price to the consumer off premise per six pack of 12-ounce cans, Budweiser \$1.44 to \$1.91. Ballantine \$1.44 to \$1.91.

Price to the consumer, 12-ounce container on premise over the bar, Budweiser 30 to 35 cents; Ballantine 30 to 35 cents.

- Q. Mr. Shine, does that report identify in any fashion (839) whether that is Ballantine Ale or Beer?
 - A. No. sir.
 - Q. What do you think it is, sir?
- A. I do not know. It is merely listed here as "Ballantine."
- Q. In any of the reports which you have there, to your memory or from your own knowledge, do you ever temember Ballantine's beers in one market being the same price to the retailer for the same package as Budweiser?
 - A. I do not know, offhand.

- Q. But the exhibit has shown one instance of which was reported at that price, has it?
 - A. Yes, sir.
- Q. All right, sir. Now, sir, directing your attents to Exhibit 145-F, will you give us the information we regard to Miami, Florida!
 - A. Miami, Florida!
 - Q. Yes.
- A. The price to the retailer per case of 24, 12-only returnable bottles, Budweiser, \$4.50; Ballantine ale, \$4.5

The price to the consumer off premise for six pack of 12-ounce cans, Budweiser from \$1.27 to \$2.10. Ballanticale from \$1.27 to \$1.80 cents.

The price to the consumer on premise per 12-outer container over the bar, Budweiser from 30 cents to 50 cents.

Ballantine ale from 30 cents to 50 cents.

- (840) Q. Now, Mr. Shine, would you tell us the highest priced beer in price to the retailer for 24 12 ounce returnable bottles in Miami, Florida?
 - A. Schaefer's at \$4.50.
 - Q. And what is the Budweiser price, sir!
 - A. \$4.50.
- Q. Do you consider Schaefer's to be a nationally reported beer, a nationally-sold beer.
- A. I am telling you what is on the report here submitted by the wholesaler. He lists "Schaefer" as a region beer and is so regarded in that market.
- Q. I might have misunderstood you, Mr. Shine I thought in identifying the regional in Miami you stated Ballantine ale.
 - A. I did. Schaefer is at the same price.

William I. Shine for Beginning -

- Q All right, sir. I am sorry. Would you give as
- A Daytona Beach. The price to the retainer per cost 2 comes returnable bottles, Budweiser, 8:45. Budweiser, 8:45.

price to the consumer off ptemise per div pack proper cans. Budweiser varies from \$1.25 to \$1.50. It was allevaries from \$1.25 to \$1.50.

The price to the consumer on premise per 12 outce occupier over the bar. Budweiser 25 cents to 35 cents. 841. Budlertine ale from 25 cents to 35 cents.

- Q. Now, sir, what is the highest priced beer in price with retailer for 24, 12 onnee returnable bottles in Day tona Beach?
 - A. The highest priced beer is Budweiser, \$4.45,
 - Q. And what is the next highest priced beer, sir!
- A. The next highest priced beer per case of 24, 12onnce bottles, is a local brand, Regal at \$3.
- Q. All right, sir. Now, would you give us the same information with relation to Fort Landerdale, Florida?
- A. The price to the retailer per case of 24, 12-ounce returnable bottles, Budweiser, \$4.50. Ballantine ale \$4.50. Schaefer \$4.50.

The price to the consumer for six pack of 12-ounce cans, Budweiser from \$1.27 to \$1.80. Ballantine ale from \$1.27 to \$1.80. Schaefer from \$1.27 to \$1.80.

The price to the consumer on premise per 12-ounce container over the bar, Budweiser 30 cents to 40 cents. Ballantine ale from 30 cents to 40 cents. Schaefer from 30 cents to 40 cents.

Q. Now, sir, would you give us the information with relation to Atlanta, Georgia, sir!

A. The price to the retailer per case of 14, 1, on, returnable bottles, Budweiser \$4.63; Carling's \$4.63

The price to the consumer off premise six pack of 1, ounce cans, Budweiser, \$1.70 to \$1.50. Carling's \$1.70 to \$2.2) \$1.80.

Price to the consumer on premises, 12-ounce contains over the bar, Budweiser 33 cents to thirty-five cents; (arling's 35 cents to thirty-five cents.

- Q. Now, sir, reporting that does that report state whether that is Carling's beer or ale?
 - A. No. sir; it just lists "Carling's."
 - Q. What do you think it is?
 - A. I do not know.
- Q. Now, sir, would you proceed to Charleston, Soull Carolina?
- A. Charleston, South Carolina. The price to the retailer per case of 24, 12-ounce returnable bottles, Budweiser, \$4.90. Ballantine \$4.90.

The price to the consumer per six pack of 12-ounce cans, Budweiser, \$1.50 and \$1.55. Ballantine, \$1.50 and \$1.55.

Price to the consumer on premise 12-ounce container over the bar, Budweiser 30 cents; Ballantine 30 cents.

- Q. Is there any indication on that report, Mr. Shine, whether that is Ballantine ale or Ballantine beer?
 - A. None at all. It merely lists "Ballantine."
 - Q. What do you think it is, sir?
 - A. I do not know.
- Q. I did not ask you if you knew, sir. I said, what do you think it is?
 - A. I have no idea what it is.
- (843) Q. You have no indication at all that would indicate what that was, ale or beer?

A. No. -ir.

Q. Or any conclusions to draw from it, whether it was ale or beer!

A. No. sir.

(). Have you ever found in any of these exhibits, in the preparation of them, the sale of Ballantine's Beer at the same price as Budweiser to the retailer for the same package!

Mr. Barton: I think that same question was asked about ten minutes ago.

The Witness: I do not recall.

Hearing Examiner Hier: This is a different locality.

The Witness: I do not recall any.

Mr. Mayer: All right.

Hearing Examiner Hier: How much more of this do you have?

Mr. Mayer: We have three more exhibits.

Hearing Examiner Hier: Very well, proceed.

By Mr. Maner:

Q. New, sir, direct your attention to exhibit 145-G, Mr. Shine, and in particular to the State of New Jersey and the Kearny branch.

A. The price to the retain r per case of 24 12-ounce returnable bottles, Budweiser, \$3.68. Foxhead, \$3.78.

(844) The price to the consumer off-premise six-pack of 12-ounce cans, Budweiser from 99 cents to \$1.23. Fox-head Ale or Foxhead from \$1.19 to \$1.23.

The price to the consumer on-premise, 12-ounce container over the bar, Budweiser, 20 to 35 cents; Foxhead, 20 to 35 cents.

William J. Shine, for Respondent these

- Q. Does that exhibit indicate, Mr. Shine, whether that is Foxhead Beer or Ale?
 - A. No.
 - Q. Is there such a thing as "Foxhead Beep"
 - A. Yes, sir,
 - Q. There is?
 - A. Yes, sir.
 - Q. That was a slip of the tongue, I take it?
 - A. Yes, sir.

Hearing Examiner Hier: Is there such a thing as "Foxhead Ale?" I have never heard of it.

The Witness: Not to my knowledge.

Hearing Examiner Hier: I think it is beer—no, no ale. I do not think they make ale in Wisconsin.

Mr. Mayer: I do not know.

The Witness: I - offhand, I do not know of any brewery that does.

By Mr. Mayer:

- Q. Nov. sir, looking at Respondent's Exhibit 145-H. (845) particularly to the Waterville, Maine, location.
- A. Waterville, Maine, the price to the retailer per case of 24 12-ounce returnable bottles of Budweiser, \$4.11; Haffenreffer, \$4.11.

Price to the consumer off-premise, six-pack of 12ounce cans. Budweiser \$1.47: Haffenreffer does not produce in cans.

Budweiser, price to the consumer on-premise, 12ounce container over the bar, 35 to 50 cents. Haffenreffer, 30 to 50 cents.

Q. Do you know where that particular brand is made,

A. I am quite certain it is made in Massachusetts. I do not know the name of the city.

Mr. Mayer: That concludes the examination with re-

gard to this particular exhibit.

Hearing Examiner Hier: I presume that you have more cross examination with regard to other exhibits. Are you through with the witness!

Mr. Mayer: No. sir.

Hearing Ex, miner Hier: Let us take a five-minute recess.

(A short recess was taken.)

(846) Hearing Examiner Hier: All right.

By Mr. Mayer:

- Q. Now, Mr. Shine, with regard to Respondent's Exhibit 146-A through -H, was the information appearing on that exhibit taken from the same reports as the information appearing on Respondent's Exhibit 1452.
 - A. Yes, sir.
- Q. Now, Mr. Shine, the heading of the exhibit is "Price to Retailer 48 12-ounce cans of 8 six-packs."

In the sale of Budweiser is the 48 12-ounce 8 six pack carton a popular item in sale to the consumer?

- A. The six-pack is a very popular item in sale to the consumer. The original carton of 48 is seldom sold to the consumer.
- Q. Now, sir, would you proceed to give us the same information which you gave us in relation to Exhibit 145 concerning the various market areas indicated on Ex-

1. Shine, for Respondent-Cross

sir, starting with Los Angeles, Cali-

Why don't you start with Phoenix, ser?

- , starting with Phoenix, Arizona.
- retailer per case of 48 12-ounce cansiser \$7.52; Coors \$7.52—do you want—ck price, please, sir.
- · same as I gave you before?
- f it is only in relation to cans in this

gave you before was cans., sir. You do not sell the six-pack non-mable bottle?

?

s proceed to Los Angeles, California, ner Hier: Los Angeles is a manufacot? es.

before we go on, I do not believe in ;, Arizona, I do not believe you did price.

ou didn't ask for him to start there, ked him to start at Bakersfield, Cali-

Mr. Mayer: I know that, and that is the reason I am asking him to go back and give us the price to the consumer.

The Witness: Phoenix, Arizona, the price of Budweiser six-pack of 12-ounce cans to the consumer off-premise \$1.25; Coors \$1.25; price to the consumer on-premise, (848) 12-ounce container over the bar, Budweiser 35 and 40; Coors 35 and 40.

By Mr. Mayer:

Q. All right; sir.

Now, would you give us the information with relation to the Los Angeles, California, market.

A. Los Angeles, California, Budweiser price to the retailer, 24 12-ounce returnable bottles, \$3.27.

Mr. Barton: This is for cans, is it not?

The Witness: Pardon me.

By Mr. Mayer:

Q. This is for 48 12-ounce cans, 8 six-pack.

A. I am sorry. Price of Budweiser per case of 48 12-ounce cans packed eight six, \$7.28; Coors, \$7.50.

Do you have the consumer prices on that?

Q. No, sir; we have not.

A. The price to the consumer off-premise six-pack of 12-ounce cans Budweiser, \$1.19; Coors \$1.23.

Q. All right, sir.

Now, would you give us the information with relation to Bakersfield.

A. Price to the retailer per case of 48 12-ounce cans packed eight, six, Budweiser, \$7.38; Coors, \$7.60.

Do you have consumer prices?

- Q. We have that, sir, for Bakersfield.
- (849) Would you give us the information regarding the price to the retailer at Blythe?
- A. Case of 48 12-ounce cans packed eight six, Budweiser, \$7.50; Coors, \$7.50.
 - Q. And we have the retail price there, too, sir.
 - A. You have got it?
 - Q. Yes, we have, sir.

Now, Mr. Shine, with relation to California, I notice these are reports from the wholesalers, is that correct sir, as the basis of this information?

- A. Yes, sir.
- Q. How many wholesalers does Anheuser-Busch have in California?
 - A. I believe we have about thirty or thirty five.

Hearing Examiner Hier: Why do you have wholesalers in Los Angeles when that is a producing plant? I would think you would sell directly there.

The Witness: We don't have a wholesaler in Les Angeles; we have our home branch in Los Angeles. We got the prices from our branches just as we got them from our wholesalers.

Hearing Examiner Hier: I see.

By Mr. Mayer:

- Q. Now, Mr. Shine, would you give us the information with regard to Anaconda, Montana, sir?
- (850) A. Price to retailer per case 48 12-ounce cats packed eight six, Budweiser, \$7.90; Hamms \$7.85.
- Q. All right, sir. I think we have the other information with regard to Anaconda.

Mr. Barton: I don't think so.

Mr. Mayer: Yes, we have.

Mr. Barton: All right.

By Mr. Mayer:

- Q. Now, sir, let's proceed to Las Vegas, Nevada, please, sir.
 - A. Yes, sir. Budweiser \$7.65; Coors \$7.70.
 - Q. All right, sir.

Now, would you proceed to Salt Lake City, Utah, please, sir.

- A. Budweiser \$6.86; Coors \$7.40.
- Q. I notice the notation opposite Salt Lake City of 10-cunce. Would you explain that, sir?
- A. Yes, sir. In Utah we do not have in Budweiser any 12-ounce packages at the present time.
- Q. Then with regard to this exhibit it is a comparison with 10-ounce cans of Budweiser to the price of 12-ounce cans of Coors; is that correct?
- A. That is correct; 12-ounce cans of Coors, that is correct; 11-ounce bottles of Coors,
- Q. But on this exhibit it is related only to 12-ounce cans?
 - (851) A. Yes, sir.
- Q. Now, sir, would you proceed to the Cheyenne, Wyoming, market, please, sir.
 - A. Budweiser \$7.50; Ballantine ale \$7.86,
- Q. I think we have the other information with regard to Cheyenne, Mr. Shine.

What is the highest priced beer sold to the retailer in the 48-12-ounce packages in Cheyenne?

- A. Budweiser, Hamms, Blatz, Millers, Pabst, Schlitz, all at the same price, \$7.50.
 - Q. They are, sir.

Now, sir, would you give us the same information with relation to Des Moines, Iowa, on the Exhibit 146-B, sir!

- A. Budweiser, \$7.40; Hamms \$7.38.
- Q. Would you give us the other information, sir, with regard to Des Moines; we do not have that.
- A. Price to the consumer off-premise six-pack 12ounce cans Budweiser \$1.10 to \$1.15; Hamms \$1.09 to \$1.13; price to the consumer on-premise, 12-ounce containers over the bar, Budweiser 20 to 35 cents; Hamms 20 to 35 cents.
- Q. Now, sir, would you give us the same information with regard to Britt, Iowa.
 - A. Budweiser \$7.40; Old Style Lager \$7.38.
- Q. Would you give us the other information, too, six we don't have it.
- (852) A. Price to consumer off-premise, six-pack of 12-ounce cans, Budweiser \$1.09 to \$1.25; Old Style Lager \$1 to \$1.25; consumer, price on-premise, 12-ounce container over the bar, Budweiser 25 cents; Old Style Lager 25 cents.
- Q. Now, sir, would you give us the information with regard to Burlington, Iowa.
 - A. Budweiser \$7.29; Hamms \$7.28.
- Q. Now, sir, would you proceed to Brainerd, Minnesota, and give us the information with regard to that.
 - A. Which one?
 - Q. Brainerd, B-r-a-i-n-e-r-d.
- A. Budweiser \$7.40; Hamms, Pfeiffer and Grain Belt. \$7.40.

Q. Would you give us the other price information?

A. Price to the consumer off-premise six-pack of 12-ounce cans, Budweiser, \$1.15 to \$1.25; Hamms, \$1.10 to \$1.20; Pfeiffers \$1.10 to \$1.20; Grain Belt, \$1.10 to \$1.20; price to the consumer on-premise, 12-ounce containers over the bar, Budweiser 25 to 35 cents; Hamms 25 to 30; Pfeiffers, 25 to 30; Grain Belt, 25 to 30,

• Q. Now, Mr. Shine, would you tell us approximately how many wholesalers in Minnesota distribute Budweiser?

A. I would say possibly fifteen to twenty.

(853) Q. Now, sir, would you tell us the method of selection of these three particular wholesaler reports to portray on this particular chart as opposed to any others in that group?

A. The method of selection for the cities has been the same on all of the charts. We selected, first, the largest market, in the state; second, we selected—we arranged all of the markets in the state in alphabetical order, and we selected the next two in alphabetical order in the event that the largest one was in the first three.

If the largest, one was not in the first three, then we took the first two in alphabetical order.

- Q. Did you make that selection after you had analyzed all of the reports from the wholesalers?
 - A. No, sir.
 - Q. Prior to analyzing them?
 - A. Yes, sir.
- Q. Now, Mr. Shine, if we could proceed to Burlington Junction, Missouri, please, sir.
- A. Price to the retailer per case of 48 12-ounce cans packed 8 5, Budweiser \$7; Hamms \$6.98.

Q. All right, sir.

Now would you proceed to the Omaha, Nebraska, market, please, sir.

- A. Budweiser \$6.98; Old Style and Hamms \$6.98.
- Q. Would you give us the information with relation to the (854) Falstaff price in Omaha, sir, for the same package.
 - A. \$6.50.
 - Q. All right, sir.

Now, would you proceed to Fairbury, Nebraska.

A. Budweiser \$7.10; Hamms \$7.10.

Mr. Barton: I am sorry, I didn't get that.

The Witness: Budweiser \$7.10; Hamms \$7.10.

By Mr. Mayer:

- Q. Now, sir, would you proceed to the Bismarck, North Dakota, area.
 - A. Budweiser \$7.92; Hamms, \$7.90.
- Q. I do not believe we have the other information, six with regard to Bismarck.
- A. Budweiser prices off-premises for 6-pack of 12-ounce cans, Budweiser \$1.25 to \$1.60; Hamms from \$1.25 to \$1.60; prices to the consumer on-premise 12-ounce container over the bar, Budweiser 25 and 30 cents; Hamms 25 and 30 cents.
- Q. Would you proceed to give us the same information with regard to Rapid City, South Dakota, sir.
 - A. Budweiser, \$7.60; Hamms, Storz, Old Style, \$7.60.
 - Q. Are there two labels of Storz beer, sir!
 - A. I believe there are.
 - Q. What particular label was that reported on?
 - A. I don't know. It just says Storz.

- Q. Is there only one Storz beer reported on that wholesaler's (855) report?
 - A. This one?
 - Q. Yes, sir.
 - A. Yes, sir.
- Q. Would you give us the other information, sir, with regard to the consumer prices in Rapid City?
- A. Off-premise 6-pack, 12-ounce cans, Budweiser from \$1.50 to \$1.80; Hamms from \$1.50 to \$1.80; Storz from \$1.50 to \$1.80; Old Style \$1.50 to \$1.80.

Budweiser on-premise, 12-ounce containers over the bar, from 25 cents to 50 cents; Hamms from 25 cents to 50 cents; Storz from 25 cents to 35 cents; Old Style from 25 cents to 35 cents.

- Q. Now, sir, with relation to Respondent's Exhibit 146-C, would you give us the same information with relation to Tulsa, Oklahoma.
 - A. Budweiser, \$8.70; Carling Ale, \$8.70.

Do you need the consumer prices?

Q. No, sir; we have that in Tulsa.

What was the highest priced beer to the retailer for that particular package in Tulsa, Oklahoma?

- A. \$8.70
- Q. What beer was that, sir?
- A. Budweiser, Schlitz, Miller, Pabst.
- Q. What was the next highest priced beer to the retailer (856) other than that group?
 - A. Falstaff, Stag, GB, and Jax, \$7.80.
- Q. Now, sir, would you direct your attention to the Bartlesville, Oklahoma, market.
 - A. Budweiser, \$8.74; Hamms \$8.74.
 - Q. All right, sir.

Directing your attention to Respondent's Exhibit 146-D, would you give us the same information with relation to Chicago, Illinois.

A. Through our local branch in Chicago, Illinois, Budweiser \$7.65; Hamms \$7.65.

Do you need the other information?

Q. Yes, sir; we do not have it.

A. Price to the consumer off-premise, 6-pack of 12-ounce cans, Budweiser \$1.05 to \$1.25; Hamms \$1.05 to \$1.25; on-premise, 12-ounce containers over the bar, Budweiser 25 to 40; Hamms, 25 to 40.

Q. From the report of the Chicago wholesaler, Mr. Shine, as I understand it, then, Budweiser is not sold for more than 40 cents per 12-ounce bottle over the bar in Chicago or at least in the area served by your Chicago branch?

A. The report reads, "Two per cent of the outlets selling for 40 cents and over."

Q. How does the report read on the Hamms' 40-cent maximum price?

(857) A. "Two per cent selling at 40 cents and over."

• Q. And is that generally true with the other maximum prices that you have given us on this exhibit and on the other exhibit?

A. It is true on this exhibit, also for Schlitz, for Palst, and for Miller. They list all of them as having 2 per cent of the outlets sell for 40 cents and over.

Q. All right, sir.

Now, would you give us the same information with regard to East Chicago, Indiana.

A. Budweiser \$7.80; Hamms \$7.80.

Do you need the consumer prices?

Q. No, sir; we do not, not in East Chicago.

Now, sir, with relation to Madison, Wisconsin.

- A. Budweiser \$7; Old Style \$6.98.
- Q. I am sorry, I did not get that. Budweiser at \$7, and Old Style—
 - A. At \$6.98.
- Q. What is the regional beer appearing on the chart that is sold at more than \$7 for 48 12-ounce cans?
- A. I am sorry. Blatz is listed as a regional beer selling at \$7.08.
- Q. Now, sir, would you give us the same information with relation to Appleton, Wisconsin.
- A. Budweiser at \$7.10; Heileman's \$7.10; Hamms at \$7.10.
- (858) Q. Directing your attention now, sir, to Respondent's Exhibit 146-E, sir, in particular to the Knoxville, Tennessee market, would you give us the information with relation to that.
- A. Budweiser \$9.28; Tempo \$9.28; Fehr's \$9.28; Ballantine, \$9.28.
- Q. I am not familiar with Tempo, Mr. Shine. Where is that manufactured?
 - A. I haven't any idea.
- Q. It is classified by that particular wholesaler, though, as a regional beer; is that correct, sir?
 - A. Yes, sir.
 - Q. Where is Fehr's manufactured?
 - A. Louisville, Kentucky.
- Q. And that has the same classification, I take it, as a regional beer on that particular—
 - A. Yes, sir.

- Q. Is the information there regarding Ballantine's just the name "Ballantine?"
 - A. Just Ballantine's.
- Q. Now, sir, would you give us the same information in relation to Miami, Florida.
- A. Budweiser, \$9.30; Ballantine Ale \$9.30; Schaefer \$9.30.
- Q. Would you give us that information, sir, with relation to Daytona Beach?
- (859) A. Budweiser, \$9.20; Carling's Ale, \$9.20; Ballantine Ale \$9.20.
- (860) Q. Now, sir, what was the highest priced beer to the retailer in that particular package in Daytona Beach.
- A. Budweiser \$9.20; together with Schlitz, Miller's High-Life, Pabst, all at the same price, \$9.20.
 - Q. What was the next highest priced beer?
 - A. Schmidt's, \$8.12.
- Q. Now, sir, would you give us the information with relation to Fort Lauderdale?
- A. Budweiser, \$9.30; Ballantine, \$9.30; Schaefer's, \$9.30.
- Q. Would you give us the same information with regar to Atlanta, Georgia.
 - A. Budweiser, \$9.86; Carling's, \$9.86.
- Q. Now, sir, would you direct your attention to Charleston, South Carolina.
 - A. Budweiser, \$10.30; Ballantine, \$10.30.
- Q. As I understand it, on that particular report, if information is merely with relation to Ballantine, it does not describe either Ballantine Beer or Ballantine Ale.
 - A. Just the word "Ballantine" is typed in here.

- Q. Did it make any difference to you, Mr. Shine, in preparing this exhibit whether it was ale or beer?
 - A. No, sir.
- Q. Now, sir, directing your attention to 146-G, would you give us the information regarding the Kearny branch, New Jersey.
 - (861) A. Budweiser, \$7.84; Fox Head, \$7.84.
- Q. Now, sir, directing your attention to Respondent's Exhibit 146-H, would you give us the information, sir, with regard to Cumberland Hill, Rhode Island.
- A. Budweiser, \$7.68; Ballantine Ale, Carling's Ale, \$7.70.
- Q. Are those both reported in that instance, Mr. Shine, as Ballantine Ale and Carling's Ale?
 - A. Yes, sir.
- Q. What is the highest priced regional beer reported by that wholesaler for that particular package?
 - A. Ruppert at \$6.84.
- Q. Would you give us the off-premise and consumer prices for that particular—
- A. Consumer price off-premise six-pack of 12-ounce cans, Budweiser, from a dollar to \$1.30; Ballautine Ale from a dollar to \$1.30; Carling's Ale, a dollar to \$1.30; Ruppert, a dollar to \$1.20.

On-premise, 12-ounce containers over the bar, Budweiser, 25 cents to 40 cents; Ballantine Ale and Carling Ale, 25 cents to 40 cents; Ruppert, 25 cents to 40 cents.

Mr. Mayer: Mr. Examiner, may we have just a few minutes before we start on this particular exhibit?

Hearing Examiner Hier: All right; we shall suspend for a few minutes. Are you about through with this witness?

Mr. Mayer: No. sir.

(862) (A short recess was taken.)

By Mr. Mayer:

Q. Now, sir, directing your attention, Mr. Shine, the Respondent's Exhibits 147 and 148, does the information as it appears on 147 and 148 with relation to 1955 prices come from the same wholesaler reports that were used a making Respondent's Exhibits 145 and 146?

A. Yes, sir.

Q. Where was the information gathered with relation to the 1954 prices?

A. The information in relation to the 1954 prices was obtained from the reports of a survey that had been made in May of 1954.

Q. Was that survey also the basis for the prices appearing on this exhibit with relation to 1953?

A. Yes, sir.

Q. All right, sir.

If you would, let us select the information appearing on Respondent's Exhibit 147-A and 148-A with relation to Washington, D. C., sir. Would you tell us, or do you have the figures with you, since there is no change, what brand that is that was compared to Budweiser in determining a \$1.06 price spread?

Mr. Barton: Mr. Mayer, rather than waste time, who don't we go on to the next, and we will look for the District of Columbia.

(863) Hearing Examiner Hier: What is that?

Mr. Barton: Rather than waste time, let us go of The Witness: At the moment I cannot lay my hands on the District of Columbia report.

Mr. Barton: It is just one sheet, and it may be mixed up in those folders, because there may not have been an extra folder for it.

Hearing Examiner Hier: Supposing he locates it during the lunch recess; go on with the next question.

Mr. Mayer: All right, sir.

By Mr. Mayer:

Q. Mr. Shine, in comparing Respondent's Exhibits 147 and 148 and, in particular, 147-A and 148-A, I notice that in many instances the price spread between Budweiser and the high regional brand is the same as the price spread between Budweiser and the low local brand.

Does that mean, sir, that the price to the retailer of the lowest local brand in those particular areas was the same price to the retailer as the highest regional brand in those areas?

- A. Yes, sir.
- Q. It does.

Now, sir, generally, Mr. Shine, do local regulations or state regulations or county regulations affect this pricing structure in that the price to the retailer might be set by (864) local statute?

- A. I don't know of any instance where a price is fixed by local statutes; no, sir.
- Q. Well, sir, let us examine then carefully the Maryland situation, in Region Two, as it appears on Respondent's Exhibit 147 and 148 with relation to Baltimore and Upper Marlboro, and the information appearing on 147 and 148; how many wholesaler reports are entailed in making up that particular information?
 - A. Two.

- Q. One for Baltimore and one for Upper Marlboro!
- A. Yes, sir.
- Q. How many wholesalers in the State of Maryland offer Budweiser for sale to retailers?
 - A. I would say approximately ten.
- Q. Would you mind, sir, extracting those two particular wholesaler reports in Baltimore, Maryland, and Upper Marlboro.

Now, sir, as far as the price information is reported there, by brand, would you give us, first, the prices reported to the retailer in Baltimore, and then the prices reported by the—I mean reported by the wholesaler in Baltimore, and then the price reported by the wholesaler in Upper Marlboro.

Hearing Examiner Hier: What price?

Mr. Mayer: For the beers appearing thereon.

Hearing Examiner Hier: What price?

Mr. Mayer: The price as reported to him by the (865) wholesaler.

Hearing Examiner Hier: For this six-pack?

Mr. Mayer: Well, actually, on this—well, 24 12-ounce returnable bottles in the first instance.

The Witness: In Baltimore, Maryland, the price to the retailer per case was 24 12-ounce returnable bottles, was \$2.58 for local brands, and \$2.62 for the national brands.

By Mr. Mayer:

- Q. Are there any other prices reported by that wholesaler?
 - A. No. sir.
- Q. Now, sir, do you have the price to the retailer on that or on those particular exhibits?
 - A. I have just quoted to you the price to the retailer.

- Q. I am sorry, I mean prices to the consumer.
 - A. Yes, sir,
- Q. Would you examine the price to the consumer of Budweiser in the off-premise six-pack cans as related to the other beer prices for six-pack cans.
- A. Budweiser prices off-premise for six-pack of 12cance cans vary in Baltimore, Maryland, from \$1.15 to \$1.35—1 am sorry, from \$1.15 to \$1.50; the local brands vary: from 90 cents to \$1.30.
- Q. Would you give us that information now as to Upper Marlboro, please, sir.
- A. In Upper Marlboro, Maryland, price of local brands to (866) the retailer, 12-ounce—24 12-ounce returnable bottles, \$2.55; price of regional brands, \$2.55; price of national brands, \$3.65.
- Q. Excuse me, sir, is there no variance there at all between the price of national brands? Are they all \$3.65?
- A. Budweiser, \$3.65; Schlitz, \$3.65; Pabst, \$3.65; and Miller's, \$3.65.
- Q. I take it there is no variation in the regionals either? They are all priced at \$2.55?
- A. There are three regionals, Busch, Ballantine and Carling's, all at \$2.55. There are five locals, Gunther, National; Valley Forge, Old German, and Christian Heurich, all at \$2.55.
- (867) Q. As I understand it, Mr. Shine, then there are two prices, \$3.65 and \$2.55?
- . A. Yes, sir.
 - Q. There is no variation from those prices?
 - A. That is correct, in the price to the retailer.
 - Q. Now, sir, do you have the prices to the consumer!
 - · A. Yes, sir.

Upper Marlboro, Maryland, price to consumer offpremise, six-pack of 12-ounce cans, Budweiser from \$1.20 to \$1.35. That same price scale applies to the other three listed national brands. All of the total brands and all of the regional brands, 95 cents to \$1.15. Price to consumer on-premise, 12-ounce container over the bar, Budweiser and the other national brands from 20 to 35 cents; all of the local and regional brands from 15 cents to 30 cents.

Hearing Examiner Hier: He now has Washington D. C.

Mr. Mayer: All right, sir.

Hearing Examiner Hier: What did you want from him on that?

Mr. Mayer: I wanted to know, sir, what brands in the make-up of Respondent's Exhibit 147-A is the low local brand selected to arrive at \$1.06 as a price spread between Budweiser and the low-local brand.

The Witness: There are four local brands listed (868) here all at the same price: Gunther, National, Valley Forge, and Old Georgetown, \$2.61; Budweiser listed at \$3.67.

By Mr. Mayer:

Q. All right, sir,

Now, in the no-change notations appearing on Respondent's Exhibits 147 and 148 that means, as I take it, that the difference, the spread, was not changed although the price might have been changed?

A. That is correct.

Q. Now, sir, what is the high regional brand reported by the branch, which is priced at a difference of \$1.05 when compared with Budweiser?

A. Ballantine beer.

Hearing Examiner Hier: Have you reached a convenient stopping point?

Mr. Mayer: Yes, sir; I think so.

Hearing Examiner Hier: We will be back at 1:40, sir. (Whereupon, at 12:10 p.m., a recess was taken until 1:40 p.m., this day.)

(869) AFTERNOON SESSION

1:35 p.m.

Hearing Examiner Hier: On the record.

WILLIAM J. SHINE resumed the stand and testified further as follows:

Cross Examination by Mr. Mayer:

Q. Now, Mr. Shine -

Mr. Barton: Are you starting? I am sorry. I didn't know you were starting.

By Mr. Mayer:

- Q. Directing your attention again to Respondent's Exhibits 147-A and 148-A, would you state for us, sir, with relation to Albany, New York, on Respondent's Exhibit 147-A, the name and price of the low local brand which was compared to the Budweiser price to reach the spread indicated on that exhibit.
 - A. In Albany, New York?
- . Q. Yes, sir.
- A. The low local brand is Hedrick, at \$2.55, Budweiser, \$3.70.

- Q. Yes., Now, sir, what was the high regional brand as it appears on 148, the difference in price being % cents between it and Budweiser?
- A. The high regional brand, Ballantine, \$2.78; Budweiser, (870) \$3.70.
 - Q. Is that just listed as "Ballantine", sir?
 - A. Just listed as "Ballantine."
- Q. In Albany, are there regional brands whose prices are less than Ballantine's?
 - A. Yes, sir.
- Q. And would that indicate, then, a larger spread between the lower regional brands and the Budweiser price?
- A. It would be a slightly larger spread. The price for another regional brand, Genesee, is \$2.73, against Ballantine's \$2.78, would make a difference of .05 cents.
 - Q. Now, sir, on the same market, what is the high local brand price?
 - A. The high local—the high local brand price is \$2.73 for Fitzgerald, Doebler and Schaefer.
 - Q. Now, in other words, as I understand the two exhibits then, there are instances in which the difference in price between Budweiser and the low local brands may be less than the difference in price between Budweiser and some of the regional brands?
 - A. Yes, sir.
 - Q. Now, sir, with relation to Respondent's Exhibits 147 and 148, do you recall any instance in which the price of any local brand, so termed by that particular wholesaler, was the same to the retailer as the price of Budweiser?
 - (871) A. On the 1955 prices?

- Q. Yes, sir.
- A. 1 do not know. I have not checked the replies for that information.
- Q. Mr. Shine, would you again give us, if you would, sir, what, your conclusions are as to the percentages of the beer today being consumed on premise and off premise?
 - A. Industry-wide?
 - Q. Industry-wide, yes, sir.
- A. My judgment is industry-wide that something in the general area of two-thirds of the beer is consumed off premise.
- Q. Now, sir, in your considered opinion, what would be the percentage of the beer consumed on premise that would be packaged beer?
- A. I would say something between ten percent and 15 percent of all of the beer consumed is packaged beer consumed on premise.
- Q In other words, I take it then of the third of the beer being consumed on premise, as to the whole of the beer consumption, of that third approximately 80 to 90 percent would be draft beer?
 - A. No, sir. It would not be that high in percentage.
 - Q. What would your estimation be, sir, of it?
- Λ. Well, if we assume that, let us for the purposes of (\$72) discussion in round numbers—let us say that 65 percent of the beer is consumed off the premise. That leaves 35 percent to be consumed on premise.

If ten percent of all of the beer that is consumed is packaged beer consumed on premise, we now have accounted for 75 percent of the beer, leaving the other 25 percent of the beer which is draft consumed on premise.

Therefore, we have 25 percent of all beer is packaged beer consumed on premise.

- Q. But what I am trying to find out from you, sir, is the relationship of the packaged beer consumed on premise as compared to the packaged beer consumed off premise.
- A. As I have stated, I think that about ten percent of all beer consumed is packaged beer consumed on premise, and about 65 percent of all beer consumed is consumed off premise, practically all of it is packaged beer. Therefore, we would say that 65 percent of the beer consumed is packaged beer consumed off premise.
- Q. And then how much, percentagewise, of beer consumed on the premises is packaged beer, that remaining 35 percent?
- A. It is 10 percent out of that 35 percent, two-sevenths, approximately 30 percent.
- Q. In other words, then 70 percent of the beer consumed on the premises would be draft beer?
 - A. Yes, sir.
- Q. Now, sir, I think, Mr. Shine, that you stated that and (873) you can correct me, sir, that over 50 percent of the package beer consumed at home has been bought at the grocery or food store. Is that correct, sir?
 - A. Yes, sir.
- Q. It is. And in your terminology of grocery and food store, do, you include the drug store?
 - A. No, sir.
 - Q. You do not?
 - A. No.
- Q. How much of the packaged foods consumed at home, in your estimation, has been purchased at the drug store?

- A. Oh, it would be a rather small amount, possibly not more than, at the most five percent.
- Q. Now, sir, approximately again, of the beer consumed at home or off premise, how much of that beer is purchased at the liquor store as opposed to the drug store or the grocery store?
 - A. I would say roughly ten percent.
- Q. Now, sir, approximately what do you believe the percentage to be of the beer purchased through the grocery store, food store? I believe you said in excess of fifty percent, but approximately what do you think it would be?
- A. Surveys are varying in a few percentage points. One of the surveys which was mentioned yesterday totaled 52 percent. Other figures have been 51 percent, but they all seem (874) to be slightly over the 50 percent mark.
- Q. All right, sir. Now, as I understand it then, we have 52 percent purchased at the food store, five percent at the drug store, approximately ten percent at the liquor store. And what other sources would the beer to be consumed off premise be purchased at?
- A. Oh, there are some scattered outlets that might account for as much as one percent of the total, places like some of the Southern markets where you can buy beer for off premise consumption at filling stations—may-be represents one percent of the total.
- Q. Well, sir, that leave me then with 66 percent. Where would the other 34 percent of the packaged goods be purchased that is consumed off premise?
- A. I did not say that this was 55 percent of the packaged goods. I said that 65 percent, or approximately

two-thirds of ail of the beer that is consumed is package beer consumed off premise.

Now, we have come up with the fact that 50 or 52 percent of it is purchased at food store, ten percent of it is purchased at liquor stores and five percent of it is purchased at the drug stores. That is your 67 percent.

- Q. In other words, your percentage then is not 50 percent of the packaged beer consumed at home, but it is 50 percent of the total beer consumption of the United States is purchased (875) at the grocery store.
 - A. It would work out approximately the same way.
- Q. Well, it would be a great deal different if we considered the 65 percent to be a total in and of itself, you see.
- A. Sixty-five percent is of all beer consumed, approximately 65 percent of it is consumed off premise.
 - Q. All right, sir.

Now, let's take that figure at the 100 percent of all off premise consumption.

- A. All right, sir.
- Q. Of that figure, how much is purchased through the food store?
- A. You mean what percent of that 65 percent or what part of that 65 percent?
 - Q. Well, either one whichever one you care to give.
- A. If you are going to put it on a percentage basis of that, it would come up to about 70 percent of that 65 percent would be purchased through food store.
 - Q. All right, sir.

Now of that total 65 percent being 100 percent total now, how much of that is purchased at the liquor store?

- Well, that would go to something between 15 and 20 percent.
 - 2. And what about the drug store percentage?
 - (876) A. Probably ten percent.
- Q. Now, sir, are you generally familiar, Mr. Shine, with the purchasing of beer from any personal standpoint in a grocery store?

Let us put it this way: Do you purchase beer personally?

- A. Yes, sir.
- Q. Do you buy it through a grocery store?
- A. No, sir.
- Q. What source do you purchase it through?
- A. I buy it from a package liquor store.
- Q. Have you ever had any experience of observing purchases of packaged beer through a grocery store!
 - A. Yes, sir.
- Q. Have you in your experience ever seen a woman buy a case of beer?
 - A. Yes, sir.
 - Q. A case of beer?
 - A. Yes, sir.
- Q. It does not make any difference where; I am going to ask you have seen a woman buy a case of beer—true, sir—at a supermarket!
 - A. Yes, sir.
- Q. What would your estimation be as to the type of person, meaning male or female, who purchased beer at a grocery store?

Mr. Barton: I don't quite understand that question. (877) If Mr. Shine understand it, all right. But, by the type of person who would buy in a grocery store, is quite unclear.

By Mr. Mayer:

- Q. In your estimation do more men buy beer in a grocery store or do more women buy beer in the grocery store, as opposed one to the other?
- A. You are talking about the number of people buying, not quantity both?
 - Q. No, sir, just buying.
- A. I would think that more women buy beer in supermarkets than men.
- Q. Is that from your own personal observation or your own personal experiences?
 - A. Yes, sir.
- Q. Do you make it a point to observe the beer sales in a grocery store or supermarket?
 - A. Occasionally.
- Q. Would you have any comment to make on the figures, as I remember in the survey yesterday, which I believe it stated 70 percent of the beer purchases in the food stores were by men?
 - A. Which survey?

Mr. Barton: Is this what you are referring to!

Mr. Mayer: Yes.

The Witness: Who bought the beer for home consumption (878) in 1950.

By Mr. Mayer:

- Q. What is the main title above that?
- A. Right here?
- Q. Is it todays?
- A. "Today's beer market is a home and family market."
 - Q. All right, sir.

- A. The sub-title, which you might call it, "Who ought the beer for home consumption in 1950"?
 - Q. All right, sir.
- The husband 70 percent; the wife 18 percent;
 ther, 12 percent.

Now, may I ask you to restate your question?

- Q. Do you have any comment to make on that, sir, in view of your testimony?
 - A. No, sir.
 - Q. Do you find any inconsistency there at ail?
- A. This is 1950 report. I don't find any inconsistency with that.
 - Q. The figures shifted that far, I take it, since 1950?
 - A. Yes, sir.
 - Q. What evidence do you have of that, sir?
 - A. Observation, general trade information.
- Q. Is it your consideration that the grocery store buyer of beer is more price conscious than, say, the liquor store (879) buyer of beer?
 - A. Yes, sir.
- Q. And would that be true more price conscious than the drug store buyer of beer?

Mr. Barton: I am sorry, I didn't get that question. (Question read by reporter.)

'Mr. Barton: I object to the form of the question. I don't see what it means, Your Honor. It is an incomplete question.

By Mr. Mayer:

- Q. Do you understand that, Mr. Witness?
- A. I think I do but -
- Q. All right.

A. But maybe -

Hearing Examiner Hier: He wants to know if the buyer of beer in the drug store is more price conscious.

Mr. Mayer: Than in the liquor store.

The Witness. I don't think I would have any good basis for answering that question for the simple reason that the percentage of beer bought through drug stores is small, very small, compared to the percentage of beer that is bought through grocery stores.

I seldom, personally I have seldom made consumer observations in drug stores. Now, just as a general observation, not based on too much, I would say that the drug (880) store buyer might be a little bit less priceonscious than the grocery store buyer, a little bit less not much.

By Mr. Mayer:

Q. Now, Mr. Shine, when one purchaser is buying for the consumption of someone else, for instance "X's" wife buys beer for "x", what effect in your judgment does the price have when the actual consumer, who is "x" is brand conscious?

A. I don't think I understand your question.

Hearing Examiner Hier: He means if I like Budweiser, and my wife goes to shop for me for some been what effect does the price differential in the food stochave on here. She could buy Gunther for, well, for \$1.50 for six, and she has to pay \$1.50 for Budweiser. Will she buy Budweiser or Gunther?

The Witness: If there has been a general family agreement that you will get what you want, I presume she will buy Budweiser, if that is what you prefer.

Hearing Examiner Hier: I might make the observation in my family that isn't so. It does not make any difference what I want if the price is lower on the other ones. I think it makes some difference, too, who is paying for it. If I am paying for it, it is one thing. If she is buying it out of her allowance, that is something else.

Proceed.

Mr. Mayer: That is all we have of Mr. Shine.

(881) Hearing Examiner Hier: Any re-direct?

Redirect examination by Mr. Barton:

Q. Mr. Shine, I believe Mr. Mayer asked you whether you knew what the relative percentage is with respect to on premise and off premise sales of Falstaff in St. Louis in 1953, 1954 and 1955, and that you told him you did not know.

Do you have any estimate of what those percentages for on premise sales and off premise sales of Falstaff were in those years?

- A. Yes, sir, I have an estimate.
- Q. What is your estimate?
- A. My judgment would be, my estimate would be that something between two-thirds and three-fourths of all of the Falstaff beer sold in St. Louis City and County is sold for off premise consumption.
 - Q. In other words, it is sold through off premise outlets?
 - A. Most of it.
- Q. What do you base—has there been any change in that since 1953?
- A. I think there might have been some slight change in it since 1953.
 - Q. In which direction?

A. I would say that Falstaff, since 1953, has probably a creased somewhat, not substantially but somewhat their business in on premise outlets.

(882) Q. What do you base that estimate, those off mates of Falstaff's position on so far as on premise and off premise sales are concerned—that is in St. Louis?

A. Well, I have talked to the manager of our St. Long-City Department. I have talked to the supervisors in the City Department, some of the deliverers, and so forth, and asked them what their general opinion is about Falstaf sales in the outlets that they call on and so forth, and came up with a general idea that about two-thirds to three-fourths of the Falstaff volume is sold off premise, is consumed off premise.

Q. By the way, would you look at the report from the New York Wholesaler or branch and tell us how Schaefer is classified and at what price Schaefer is sold to retailed in New York as compared to Budweiser and other brands

A. In the report from our Bronx Branch, Schaefer's priced to retailers, per case of 24, 12 ounce returnal bottles, at \$2.73; Budweiser, \$3.68.

Q. What other brands are listed in New York!

A. They list Piel, Ruppert, Ballantine and Rheingel at \$2.73, Pabst at \$3.65, Miller, Schlitz and Budweiser & \$3.68.

Q. Would you check your Baltimore report and tell to at what price Budweiser was sold to retailers on the 24.15 ounce bottles in 1955? I have reason to think that to record might be in error about the testimony this morning (883) and I may be wrong. It may be the same, but a any event, tell us now what it is.

- A. In Baltimore, the price to the retailer of Budweiser in 24, 12 ounce returnable bottles is \$3.62. The price of the local brands listed, \$2.58.
 - Q. Those brands are what?
 - A: National, Gunther, American, and Globe.
- Q. They are designated as locals on the report form; is that right?
- . A. Yes, sir.
- Q. Are there any reports for regionals on that report form?
 - A. No, 'sir.
- Q. Would you refer to Salt Lake City, on Respondent's Exhibit 146-A?
 - A. To what city, please, sir?
 - Q. To Salt Lake City, Utah.
 - A. Yes. sir.
 - Q. What was the Budweiser price there?
 - A. Budweiser price is \$6.86.
 - Q. For what?
- A. For a case of 48, ten ounce cans, packaged eight, six.
 - Q. What is the price for the high regional?
 - A. The high regional is Coors, \$7.40.
 - Q. For what?
- (883-A) A. Case of 48, 12 ounce cans, packaged
- Q. Now, would you look at Respondent's Exhibit 145-A? What is the high regional with respect to the 24, 12 ounce bottle in Bakersfield, California?
 - Mr. Mayer: I believe he testified to this once.
 - Mr. Barton: All right. Let us find out.
 - Mr. Mayer: Again and again?

Hearing Examiner Hier: I don't know whether he did or not.

Mr. Mayer: Certainly he did.

Hearing Examiner Hier: If it is in the record, why are you putting it in the record again?

Mr. Barton: I have a point to bring out, your Hober, about this particular one which was not brought out or cross examination.

Hearing Examiner Hier: All right.

The Witness: Bakersfield, California, you say the 24, 12 ounce returnable bottle?

Ru Mr. Barton:

- Q. Yes.
- A. The price of Budweiser is \$3.35.
 - Q. What is the high regional?
- of 24, 11 cunce, all so far as I know Coors produce returnable bottles in 11 cunce size.
- (884) Q. So that their 11 ounce size is selling above your 12 ounce size in Bakersfield, California?
 - A. Yes, sir.

'Mr. Barton: May we take a very short recess.

Hearing Examiner Hier: We have only been running half an hour.

All right, a few minutes then.

(A short recess was taken.)

Hearing Examiner Hier: On the record.

By Mr. Barton:

Q. Mr. Shine, have you examined Respondent's Exhibit 146-A to determine who in general are the high

regionals, who were selling at or about the same price the 48, 12 ounce can packages or comparable packages, to that of Budweiser?

- A. Yes, sir, I have.
- Q. And who are the regionals?
- A. Well, on 146-F, Flagstaff, Arizona.
- Q. Just tell me who in general who they are.
- A. It is Coors and Hamms regional brands of beer.
- Q. Not specifically.
- A. Yes.
- Q. What was it, for example, in Flagstaff, what was the difference? Who was the regional and what is the difference in price?
- A. The regional brand is Coors, the difference in price (885) on the chart here—you can see your difference in price is something about five or seven cents. I can look it up.
- Q. Have you examined the report forms to determine whether the differential in price that existed between the high regional and Budweiser, was reflected in any differential at consumer level?
- A. There was no difference. The same price prevailed at consumer level.
- Q. The same price between Budweiser and competing foors or Hamms price?
 - A. Yes, sir.
- Q. Do you have your sheets with respect to Minnesota?
 - A. Yes, sir.

You mean the reporting forms?

- Q. Yes.
- A. Yes, sir.

- Q. Would you examine the sheet which you got from your wholesaler in St. Paul, Minnesota?
- Λ. Yes. I have it here, the report from our branch in St. Paul.
- Q. What is the Budweiser price in St. Paul to retailers on the first, let us take 24, 12 ounce returnable bottle?
 - A. The price of Budweiser, \$3.35.
- Q. And what other prices are listed on that sheet for the 24, 12 ounce returnable bottle?
- (886) A. Schlitz, \$3.30; Pabst, \$3.28; Millers, \$3.33; Hamms, \$2.98; Pfeiffer, \$2.98; Grain Belt, \$2.95; Glucks, \$2.95; Schmidt, \$2.87.
- Q. What is the price at the retail level on the off or on premise consumption?
 - A. On premise consumption?
 - Q. Yes.
 - A. Over the bar?
 - Q. Yes, of Budweiser and of Hamms.
- A. Budweiser is 25 and 35 cents; Hamms is 20, 25 and 30 cents.
- Q. What is the situation on the price of the 48, 12 ounce cans, as between Budweiser and Hamms in that market?
 - A. The price to the retailer?
 - Q. Yes.
 - A. Budweiser is \$7.42; Hamms, \$4.06.
- Q. What is that translated into at the retail level on the 6-pack?
- A. 6-pack of 12 ounce cans, to the retailer, off premise, Budweiser from \$1.09 to \$1.25; Hamms from \$1.00 to \$1.25.

William J. Shine, for Respondent-Redirect

Q. Mr. Shine, on cross examination Mr. Mayer referred to the fact that you had picked only three whole-saler reporting forms in Minneapolis, namely, — Minnesota—St. Paul, Brainard and Bemidji.

Would the result have been any different, Mr. Shine, (887) in the portrayal that is made on the chart if you had charted each one of the wholesale reporting points in Minnesota?

- A. I don't think that there would have been any difference. If there had been any, it would have been a matter of a penny or two pennies.
- Q. Mr. Mayer asked a question concerning whether you had made any analysis of the prices charged by different retail outlets. Do you recall that question?
 - A. The question that Mr. Mayer asked this morning?
- Q. That is right, about the retail prices on premise outlets.
 - A. Yes, sir.
 - Q. How did you understand that question?
- A. I understood Mr. Mayer to ask if I had tabulated the number of outlets that sold Budweiser across the bar at 25 cents and the number that sold it for 30 cents. And I answered that I had not so tabulated it.
- Q. Have you made any tabulation—you do recall, of course, there is on the reporting form, Respondent's Exhibit 144, a box for asking for the number of on premise outlets in which there is no difference in over the bar price for 12 ounce containers of Budweiser, versus regional brands, and another box for the same information with respect to Budweiser versus local brands and similar information is requested for the number of on

William J. Shine, for Respondent-Recross

premise outlets where the differential is .05 (888) cents and where it is .10 cents?

- A. Yes, sir.
- Q. Have you made any tabulation of the information that was received on the reporting forms, based upon that information?
 - A. Yes, sir.

Mr. Barton: That is all.

Hearing Examiner Hier: Mr. Mayer.

Recross Examination by Mr. Mayer:

- Q. Mr. Shine, in reporting of the various wholesalets, as I understand it, for instance, noting the spread of Budweiser between, well, let us say 25 cents, 25 to 4 cents—25, 30 or 35 cents, let us put it in one outlet, there was no indication as to the number of outlets that have the 25 cent or how many have it at 30 cents, or how many have it at 35 cents. It was given in the terms of the spread in the price, was it not, sir?
 - A. As I gave it to you this morning?
 - Q. Yes, sir, as the wholesaler reported it.
- A. On the form they report either the number of outlets at each price or the percent of outlets at each price.

You may recall on one example this morning I read it right off the form that two percent had reported.

- Q. Then an analysis of these exhibits will show us in detail the number of outlets at the various prices when you were (889) giving the spread in prices this morning.
 - A. Yes, sir.

William J. Shine, for Respondent-Recross

- Q. Now, sir, in the reporting form I notice it calls for per case 24, 12 ounces. Did the wholesaler in returning the form with relation to Bakersfield make a specific notation on there that his prices concerning Coors were for an 11 ounce container?
 - A. Yes, sir.
 - Q. He did.
 - A. Yes.
 - Q. That is all I have.
 - A. By footnote on the form.

Mr. Mayer: Thank you.

Hearing Examiner Hier: Anything more?

Mr. Shine, who made the decision to cut prices in St. Louis in the Spring — what official — of 1954?

The Witness: I don't know what official made the decision. All I know, Your Honor, is that it was the decision of top management of the company.

Hearing Examiner Hier: Was it as the result of a round table conference, a discussion?

The Witness: I don't know because I was not present at such, at any such discussion, if there was such a discussion. I don't know.

Hearing Examiner Hier: You can't tell me why St. (890) Louis County was picked then?

The Witness: I can surmise, but I couldn't — I couldn't tell what had been in the minds of management people when they made the decision.

Hearing Examiner Hier: Anything as the result of my questioning? Do you have any questioning?

Mr. Barton: 1 do not.

Mr. Mayer: No.

Hearing Examiner Hier: Then you are excused, Mr. Shine. Thank you very much.

(Witness excused.)

Hearing Examiner Hier: Who is next?

Mr. Barton: Mr. Hallquist will be next, Your Honor. Hearing Examiner Hier: This is Mr. John Hallquist, Jr., who was previously sworn in this case.

JOHN HALLQUIST, JR. resumed the stand and testified further as follows:

Direct Examination by Mr. Barton:

- Q. Mr. Hallquist, in the course of your previous testimony in this case, I believe you testified that you mailed out Respondent's Exhibit 12 to some eighty or eighty-five different markets in the country.
 - A. Eighty-six, to be exact.
 - (891) Q. Sometime in April of 1954?
 - A. That is correct.
- Q. Did you personally prepare Respondent's Exhibit 12? Do you have a copy of it?
 - A. I think I have. Yes, sir, I did.
 - Q. Was it reviewed by anybody before you mailed it?
- A. Oh, yes, several people on the Sales Manager's staff as well as the Sales Manager reviewed the form and the questions that we were asking before we mailed it or put it in its final form.
- Q. I note that on Respondent's Exhibit 12, reference is made on various pages, for example on pages 3 through

10, to various district, and there is a note on each of them, for example, percent decrease, two months sales package and draft.

Do you recall to which two months, which two months are referred to in that reference?

- A. January and February of 1954.
- Q. And is that a comparison of January, February 1954, with
 - A. With the same period in 1953.
 - Q. in 1953?
 - A. Yes.
- Q. Will you explain the procedures which were followed in conducting this survey?
- A. Yes. We selected, first, the markets in the country, (892) the major markets in the country in which our sales decline had been most precipitous, selecting a major market from each State, at least, and perhaps two or three from some States, depending upon the size of the market and the amount of sales decline.

What we wanted to do was to get a good picture, overall, of conditions nationally, and in individual major markets.

The form, it might be well to explain that our District Managers, as we term them, have charge of a State, or in the case of the major States, perhaps half of the State. They are the sales managers for their district. Over them we have an assistant regional manager and a regional sales manager. At that time we had eight such sales areas or regions in the country. The survey forms were mailed to district managers in the instances where there was only one market in a district that we wanted to get survey information from. If there were two or

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three, the assistant regional manager might take one and the regional manager might take one. In all cases, only one man went to one market.

- Q. Then, of course, there was a portion of the survey form which was to be filled in by the wholesaler who was to be contacted by the person taking the survey?
- A. That is correct; information was to come directly from the wholesaler's records.
- Q. I notice on Exhibit 12 there is a reference, on page 2, (893) to the following: that as per our discussion after the regional meeting in St. Louis, find attached a list of major markets in your region for which the special survey should be completed.

When was that regional meeting held in St. Louis!

- A. I believe either the last several days of March or the first several days of April.
 - Q. And you were there, were you?
 - A. That is correct.
- Q. Now, will you explain the purpose of detailing the various information which Respondent's Exhibit 12 requested; for example, what was the purpose of obtaining the comparison of Budweiser package sales to retailers for the month of October through March of 1952, 1953, as compared with 1953, 1954, broken down to various types of packages as on Page 13 of the record?
- A. Yes, we were interested in learning, and also having our field man fully aware as to what particular cartons or in which particular cartons our major decreases occurring, if there was any difference.

In other words, was the greater loss coming in 24. 12 ounce cartons or was the greater loss coming in the 8, 6 cans.

- Q. By and large, in your business, is there some generalization which is drawn as to whether a package is a take home (894) package or a package to be consumed on the premises, depending upon whether it is bottles or cans?
- A. That is very correct. In the case of the returnable 12 ounce bottles, generally speaking, they are considered an on-sale item, or an over the bar bottle.

In the case of cans, they are considered, generally, as a take home package.

- Q. Where do the returnable bottles fit into that picture—I mean returnable bottles?
- A. Non-returnable bottles are also considered generally as take home packages.

I might note here that in the extreme right hand column we indicated a 36, 7 ounce, or a 12, 32 ounce, and asked the man reporting to indicate one. We gave him the option of taking a 7 ounce package or a 32 ounce package, because in some areas the 7 ounce package is a major item. In other areas it is practically not sold at all.

The same holds true for 32 ounce bottles. There are some areas in the country where quarts are very, very popular, for example, in New England and New York State. When you get around Baltimore and Washington, I don't think you sell many quarts.

- Q. Those quarts are, by and large, take home packages?
 - A. That is correct.
- Q. What was the purpose of the inquiry on Page 14 regarding (895) sales by the wholesalers or on sale

etlets and off sale outlets, which I presume are the same on and off premise outlets?

- A. That is correct. Once again we were seeking to termine from what type of outlet we were having our entest amount of sales decrease, if there was a difference between the sale decrease in the on sale or off sale.
- Q. What was the purpose of obtaining the next item information on Page 14, namely, the number of outlets vided between on and off sale buying as of March 31, 53 and 1954?
- A. Well, we were concerned during this period in tich our sales were dropping, that we might also being distribution, in other words, placements of our and. If that was happening, we were concerned that drop would continue even at a faster rate.
- Q. What was the purpose of inquiring as to it, as a do on the next page, page 15, of Exhibit 12, with pect to the number of on premise or on sale outlets ling at 25 cents, at 30 cents or 35 cents, both pretober, 1953 and post.

Well, in the Spring of 1954, what was the commercial nificance of that?

A. Well, pricing both on sale and off sale are of trendous importance to us. And we were extremely intered in finding out the pattern of pricing over the bar the (896) period before the price increase and the od after the price increase, and this would give us number of outlets selling at each one of those prices. We were not concerned with the fringe above the 35 price. We were interested in the mass of the marwhich normally was selling around 25 and 30 cents.

- Q. Before the price increase in October, 1953, what was the predominant price, the 25 cent price?
- A. Yes, with a great deal of 20 cent price in certain areas. That had shifted considerably, however, after the price increase of October 1953, and a large number of outlets were selling at 30 cents per bottle, which we have found is a terrific barrier to beer sales.
 - Q. What is the principle involved there?
- A. We feel that a quarter is an easy medium of exchange. It is a coin that you carry in your pocket and you readily spend, a quarter. When you have to reach in and put another nickel with it, it seems like it is a terrific barrier.
- Q. What was the purpose of obtaining the information requested in the next item, that is, with respect to the number of outlets with price differentials to consumers, national against locals and national against regionals?

And let me ask you also, does that refer to on premise outlets alone?

A. That is correct.

(897) Q. I see.

What is the commercial significance of that information?

A. Well, we found that during the wave of price increases over the bar, that many outlets had increased their prices on, let us say, national brands, and failed to do so on regional and local brands, who may not have increased their price in an area. We found that in a great many instances, differentials were created that did not exist before. In some areas there were not differentials between national brands and local brands or re-

gional brands. There are other places where no differential existed before, we find now that they had a differential existing. In other areas the differential went to ten cents.

- Q. What was the purpose of the next item, the information with respect to national and local, national and regional prices and the differences on the 6-can pack?
- A. Once again to get information currently as to the prices of national brands as compared to local brands and regional brands for 6 can packs.
 - Q. I note -
 - A. And to note the differential.
- Q. I note, by the way, that the form consistently refers to "route sheets or sales record cards" as a possible source of the information from which the form is to be filled out.

Would you please tell us what is referred to in that (898) connection?

A. We furnish our wholesalers throughout the country with sales record cards and make them available free of charge each year.

In addition, our field men have been schooled in the use of sales record cards and also the benefits and value of using route book and route record cards for both driver salesmen and for regular salesmen.

- Q. What is the information, what type of information is to be maintained on those cards?
- A. On sales record eards, generally, the information is sales or purchases by a retail outlet. They come in different forms. Some of them are posted on a daily basis. Some of them have space allotted for 31 days a month. Other ones, perhaps, have a weekly total.

Also, on that sales record card is information about the type of outlet, the selling prices at that outlet, information of that kind.

Q. What was the nature of and the purpose of the information requested on Page 16, prices to retailers?

A. Well, the pricing situation was and had been in a turmoil ever since October. We didn't have current information for all points in the United States as concerns the various national brands in individual markets, nor did we have it for local and regional brands, and for that reason we asked for (899) pre-October prices for the so-called national brands, with space for three local brands to be listed and two regional brands.

We asked for the pre-October price, the price that was in effect at the time the survey was filled in and the amount of increase. We asked for that information for what we normally consider the standard packages, the 24, 12 ounce returnables, and the 8, 6 carton of cans.

Q. And by and large, when the survey forms were returned with the names of those locals or regionals to whom reference was made filled in by the wholesaler?

A. That is correct.

We asked them to insert the brand names of three leading local brands and two leading regional brands.

- Q. What was the purpose of obtaining the next item of information which is entitled "Industry Package Percent Sales Increase or Decrease"?
- A. Well, there is a time lag in any of the industry figures that we are able to get, from the State ABC Boards that do furnish that information. It is also true that it is not available from too many States.

So, we wanted to know, first of all, what was the industry doing, was the industry itself going up and down. We wanted to know what Budweiser was doing in that local market; what Schlitz was doing in that local market; and we wanted to (900) know what the leading regional and local brands were doing, because we wanted to know who was getting the business, if business for the industry was on an even keel in that market.

- Q. Because you knew you were not getting it?'
- A: We were not getting it.
- Q. What was the nature of the instructions which were given with regard to the sources which your field men and your wholesalers were to utilize in giving you information on this survey?
- A. We felt that this was a very, very important survey and for that reason we asked our field men to get information from sources that they and we could consider reliable, and to open up their thinking, and to give them a lead we suggested such as other breweries and other wholesalers; the local liquor control board.

In some areas newspapers would have that information available. And, of course, the least desirable would be the retail calls that the man made himself.

- Q. I note that on Page 17 in the report, the person making the survey was asked to comment upon the reasons for Budweiser's package sales decline in the area.
 - A. That is correct.
- Q. What particular information were you seeking in that request?
- A. We were seeking any information the man could give us, (901) because as I testified earlier, there was not, let us say, full agreement in our offices in St. Louis.

as to the causes of the sales decline or the action that should be taken.

And for that reason we were frankly asking for an individual appraisal, market by market, which we tabulated later.

- Q. That individual appraisal was of your district manager, or of someone who was in touch with that market?
 - A. And consulting with the local wholesaler.
- 'Q. What was, in general, the remainder of the survey designed to do, or designed to inform you about?
- A. We know, of course, that the market on which the report was being prepared was a market in which we were having some serious sales reversal. We wanted to know whether the whole-saler's effort in the market had changed.

We wanted to know the number of delivery salesmen, he had before the price increase and after the price increase, March 31, 1954.

We wanted to know the number of deliver salesmen, all of which was designed to tell us whether or not — the cause of the sales decreases that he had, had he cut back on his sales effort, in which case we could figure that we were going to have less sales.

- Q. Mr. Hallquist, in the period in which you have been connected with Anheuser-Busch in a sales capacity, had there ever been a survey of this nature and magnitude undertaken prior to (902) April 1954?
- A. Mr. Barton, not to my knowledge. In fact, I can't recall a situation at any time in my history with the company that we had cause for concern of this kind.

- Q. What was the procedure that was followed by you or by others after Respondent's Exhibit 12 was sent out to the field and the survey forms had been returned to St. Louis filled in?
- A. Well, they were all In fact, I reviewed all of them as they came in. On many of the forms I have made my own notations. Those that I have deemed of special interest, that might bear on a particularly critical market, or the comments of the wholesaler were of such nature that I thought our sales manager ought to know about it, I made a point of seeing that he read the wholesaler's comments and the other information on the form.
- Q. Did you make a tabulation of the items of information of a statistical nature that were disclosed, asked for in the report?
- A. Yes, sir. We made a detailed tabulation and wrote a report interpreting the information which we had tabulated.
- Q. I show you Respondent's Exhibit 153 and ask you whether that is a summary of the survey forms which were returned by the various district managers and field men whose responsibility it was to fill out the forms?
 - A. Yes, sir.
- (903) Mr. Barton: Previous to this time, in fact the first day of the hearing, we turned over to Commission Counsel all of the forms which were returned and which formed the basis for Respondent's Exhibit 153, and they are now in the possession of the Commission Counsel for the purpose of checking the statistical data contained in the report.

I offer Respondent's Exhibit 153 in evidence.

Mr. Mayer: May I have just a moment, sir.

I have the same objection to this that we raised to the materials relating to conditions and prices outside of the St. Louis market area. I don't believe that it is relevant nor material to any defense to the charge of varying price discrimination in St. Louis.

Hearing Examiner Hier: That objection will be overruled as were the others. The Exhibit is admitted in the record until such time as you choose to move to strike, if you choose to move to strike.

(The paper referred to, heretofore marked Respondent's Exhibit 153 for identification, was received in evidence.)

By Mr. Barton:

- Q. Mr. Hallquist, referring to Respondent's Exhibit 153, and page 36 thereof and following pages, will you please tell us what those pages are in the report?
- A. That is a copy of a special sales analysis form which was returned by our regional manager, F. P. Rollins, to cover (904) the Drenik Beverage Distributing Company, in Cleveland, Ohio. It is dated April 23.
- Q. And is this similar in nature to the other forms which were returned by your other district managers?
- A. Yes, sir. This is just a sample completed form which was attached to the tabulation so that everybody knew just about the form operated.
- Q. I note that in the body of RX153, both in the report and in the attachments, there are these statistical analyses which were made of the forms returned.

I ask you, did you in the making of the statistical analyses contained in RX153 use all of the data that was returned?

- A. Yes, sir.
- Q. By the report?
- A. Yes, sir. There were 78 out of the 86 forms that were mailed which were returned and tabulated in this summary.
- Q. I take it that since you were in a somewhat serious situation and were concerned with getting the report in shape, some of them were returned too late to be included?

Mr. Mayer: I object to that. Let him ask the witness his analysis of why things happened.

Mr. Barton: All right.

Hearing Examiner Hier: Sustained.

Bu Mr. Barton:

- (905) Q. Mr. Hallquist, why were some of the reports from the 86 markets to which RX12 was sent not included in the tabulation?
- A. We had a closing date on the return of the form itself. In other words, we had to get this analysis completed by a certain date. Further, I think that several men who were assigned to individual markets for our reason or another, they were not able to proceed to those markets. There may have been illness. I don't remember the exact circumstances but some of the seven or eight that were not completed—some were never completed.
- Q. What did the report from Drenik indicate was the action which he recommended Anheuser-Busch take to arrest the sales decline?

Mr. Mayer: I object to that. Isn't that stated on the exhibit?

The Witness: Yes, sir, it is.

Hearing Examiner Hier: Sustained. It is on the exhibit. Sustained.

Mr. Barton: Pardon?

Hearing Examiner Hier: If it is on the exhibit as the witness says, I will sustain the objection. No point in getting it in orally also.

Bu Mr. Barton:

- Q. Let me ask you this: Were there recommendations from wholesalers whose forms have been given to counsel for the (906) Commission similar to those which Drenik made and which is attached to Exhibit 153, namely, that Anheuser-Busch bring out a beer which could compete pricewise with regional beers in his market?
 - A. There were others that had that comment.
- Q. What were the main conclusions that were reached as the result of this survey which is represented by 153?
- A. There are two reasons advanced for the sales decline: Number one, economic conditions, a loss of, say, overtime in certain heavily industrialized areas, and that premium pay had been eliminated in other areas; that consumers apparently had less money to spend than they had before.

The second important reason given was the pricing factors, that the national brands had gone up and as a result prices to the consumer both over the bar and from take home outlets had increased, and in most instances a greater differential was created than existed before.

Q. What, in general, was the finding with respect to the number of outlets where the ten cent spread between Budweise and other regional brands had been affected?

A. 67 percent — there was an increase of 67 percent in the number of outlets that had a ten cent differential between local brands and national brands, some 5,200 outlets in the 78 reporting points.

In connection with regional brands, the increase was (907) some 8812 percent where a ten cent differential had been created where none had existed before, a total of about 4,200 outlets.

Q. Was there any finding that even where the Budweiser and the regionals had increased that the price increase had created additional resistance because of the additional nickel added?

Mr. Mayer: I object to that. That statement is right from the report.

Mr. Barton; All right.

By Mr. Barton:

Q. What, if anything, did the report, the survey show with respect to the differential between Budweiser and local or national or regional brands at the off premise, in the off premise market?

A. There, again, the differential had existed on, say, a six can pack, had increased by two, four, six, eight, ten cents per carton. That market is extremely price conscious and actually a great many consumers of Budweiser traded down to the next lower priced brand.

Q. Mr. Hallquist, I note on Page 3 of RX153, that it is stated that sales management recognizing the continuing decrease in Budweiser had undertaken a number of types of promotions other than of a price nature in an attempt to reverse the trends.

Could you describe generally what some of these were (908-910)—and where they were used?

A. Well, national sales contests, meetings in the field with wholesalers to stimulate them, material with which they could combat pricing, additional new points of sales material.

In addition to that, we urged our wholesalers to do many things. We urged them to put on additional manpower, to us and at their own expense local consumer advertising.

We urged them to put in incentive plans for their deliverers and their salesmen. I think we used about everything that sales management would have available to it.

(911) Q. Wese there some areas in which you ran into boycott by retailers of your product during that period!

Mr. Mayer: I object to that. What relevance is that particular survey —

Mr. Barton: It is a general part of the general sales picture in that period, Your Honor, and this is the period of the spring of 1954 that we are talking about.

Hearing Examiner Hier: This GSP, this general sales picture, I hear so much about every time the respondent puts on proof, is getting to be awfully wide. I do not see anything relevant about boycotts. You are talking about what he has done to move merchandise, not what has been done to keep him from moving it.

Mr. Barton: But I am getting to the point of what problems there were in the movement of merchandise, Your Honor.

Hearing Examiner Hier: You can bring out what is has done; never mind about the problems. A boycout is after all, an illegal proposition.

Off the record.

(Discussion off the record.)

Hearing Examiner Hier: I will sustain the objection Never mind the boycott picture; just tell us what else you did.

The Witness: Well, we had to send special crews integertain areas to handle pricing situations that had gotter (912) out of hand, there where our retailers had actually lost a substantial part of their distribution.

Hearing Examiner Hier: What do you mean, gotter out of hand? They had gone price-crazy and cutted What do you mean by "gotten out of hand"?

The Witness: Well, the wholesaler could not hand the situation. Retailers would no longer stock the product.

Hearing Examiner Hier; Oh; the source dried up. A. right, go on.

Bu Mr. Barton:

- Q. I note, Mr. Hallquist, that the recommendation made by some of the wholesalers and field men in RX-12 leaned to more consumer advertising. What, if anything was done about that?
- A. Well, Anheuser-Busch, I think, had its largest advertising budget in 1954 that it had ever had before
- Q. Was there a feeling around the company and the sales department that advertising could handle the pro-

lem or that it took something more than merely advertising?

A. Yes. I recall that management offered our advertising department \$1 million in additional funds for advertising, if they thought that the expenditure of that additional advertising money would straighten out the situation in so far as the sales decline was concerned.

Neither the advertising department nor our advertising agency felt that additional advertising dollars would do the (913) job.

- Q. Who was the advertising manager of Anheuser-Busch?
 - A. Ray Krings.
 - Q. Who was your advertising agency?
 - A. The D'Arcy Advertising Company.
 - Q. Located where!
 - A. In St. Louis, Missouri.

Mr. Barton: May we take a short recess, Your Honor? We are half way here.

Hearing Examiner Hier: Five minutes.

(A short recess was taken.)

By Mr. Barton:

- Q. Mr. Hallquist, was any consideration given to the possibility of rolling back the October, 1953, price increase which had been made nationally as a result of your survey?
- A. Yes, sir. There were quite a few very serious discussions about it. However, it was felt almost by everyone concerned that rolling back the prices would not be the answer to the problem.

Q. What was the reason for that conclusion!

A. Well, over the years, our strength has been in the bar, over the bar, and when over the bar retailers, on-premise retailers, increased their prices by five cents per bottle—I don't know of any of them that go up a penny or two pennies—but when they move their prices, they go up at the rate of five (914) cents a bottle, which is \$1.26 a case—even though the beer to the whole safer has only gone up 15 or 20 cents—they are not inclined to reduce their prices by \$1.05 or \$1 if the brewer or wholesaler reduces the price to him by the 20 or 15 cents that he originally went up.

I might add that has been our experience over the years.

Hearing Examiner Hier: You mean they seized upon the price increase from the brewer as a result of the strike to go up five cents over the bar, and if you rolled it back, there wouldn't be a thing said about it?

The Witness: Yes, sir; that is very true. And I might add here that as a result of some studies that we made in Ohio—and Ohio is a state in which we cannot use a ten-ounce package or a 7-ounce package—we made a partial roll-back in Ohio. I spent a considerable time in the city of Cleveland myself working with the wholesaler, making retail calls, and I might say that the wholesaler in that market went up 20 cents per case, he rolled back the returnable bottles 15 cents a case, we didn't get any retailers at all to reduce their price, and there was and still exists, a ten cent spread between Budweiser and the local beers in Cleveland, whereas before there had only been a nickel differential.

The prices now are 20 and 30 cents compared to 20 and 25 cents pre-October, 1953.

By Mr. Barton:

- (915) Q. Mr. Hallquist, when you refer in that answer to local brewers, who are you talking about?
- A. In the city of Cleveland, Carling's is one: Leesey, P.O.C.; there is Duquesne, which is actually a regional from Pittsburgh, Pennsylvania. I would say that is the major ones in that market.
 - Q. And Carling, the headquarters are where?
 - A. In Cleveland, Ohio.
- Q. And they also own the brewery in St. Louis, do they not?
- A. In St. Louis, Missouri. Their new plant ought to be opened pretty soon in Natick, Massachusetts. They have had—I think I testified to this before—they have plans to build a brewery in Atlanta, Georgia, and have had legislation passed down there which would permit them to continue operation of a brewery even if the state went dry. That, of course—they have, of course, some 14 breweries because they are a Canadian company.
- Q. Mr. Hallquist, were there any long-range plans developed as a result of this survey, and as a result of the general thinking in the company to meet this problem of lagging sales?
 - A. Yes, sir; there was,
- Q. What was the general nature of those, the category?
 - A. Yes, sir.

The first thing that we did was to study the possibility of using our present, at that time, our regular take-home

(916) packages, reducing the price on those to see if we could become a better entrenched, or get a better hold in the off-promise market.

The next thing was the planning for the new packages, and later the planning for the new products.

(The documents referred to were marked Respondent's Exhibit 154-A through F for identification.)

By Mr. Barton:

Q. I show you RX-154-A through F.

Hearing Examiner Hier: Before you get to that, you have not offered 153.

Mr. Barton: I thought I did, Your Honor.

Hearing Examiner Hier: You did?

Mr. Mayer: Yes, sir.

Mr. Barton: I thought it was admitted.

Hearing Examiner Hier: All right, go ahead.

By Mr. Barton:

- Q. I believe there is a pending question. I asked you what 154- Λ through F is.
- A. This is a memorandum written by me to Mr. Barsi on June 4, 1954.
- Q. What were the circumstances under which this memorandum was prepared?
- A. Well, sometime after the tabulation of the April. 1954, survey was completed, Mr. Barsi asked me to investigate the practicality of reducing our take-home packages, reducing the (917) price of our take-home packages, in order to make it more attractive in so far as the off-premise was concerned.

I studied the prices and differentials for most of our packages to determine whether or not we could successfully do that or not. It was my conclusion that it could not be done successfully, and I made certain recommensations to Mr. Barsi in the memorandum.

Q. What were the packages that you were considerate as the take-home packages in that connection?

A. Well, the principal package that we considered was the 12 ounce can in all of the packs that we manufacture in the 24 twelve-ounce, the 48 twelve-ounce pack, the 4 12s, and the 48 twelve-packs, and the 8/6s.

We also considered using the 32 ounces, and I had some thoughts about the 7-ounce, and I investigated that at the same time.

Q. How about the 12-ounce, non-returnable bottle?

A. Well that, of course, was included as an off-premise package.

Q. You say that you concluded that this proposal you were studying was not feasible. What were the considerations which dictated your conclusions?

A. After studying this, the selling prices, and the differential between our own 12-ounce bottle carton, the 24 twelve-ounce bottle carton, and the equivalent of that in cans, it was (918) my feeling that any reduction in that would be productive of results price-wise in the off-premise market would reduce that package to the same price as the 24 twelve-ounce bottle, or below it.

If that happened, we would be in the position of cutting into our, or reducing our 24 twelve-ounce returnable sales.

We must remember that with the non-returnable packages like the 10-ounce non-returnable bottle, the 10-ounce

can, or the non-returnable quart bottle, that there are additionad costs involved in the manufacture of those or packaging of those as compared with the 24 twelve-ounce returnable bottle.

We have to pay for the one-time trip of the container, the can that we are going to throw away, the consumer is going to throw away, or the non-returnable bottle that they are going to throw away.

So that in addition to the loss in revenue that we would incur if we reduced the price of the can packages, or the non-returnable packages, even with an expected increase in sales, we would also be cutting in to our returnable bottle business, which is a profitable one.

I might explain -

Q. Go ahead.

A: — (continuing) further that the retailers in oppremise outlets, if the price of cans or non-returnable bottles was too close to that of the returnable bottle, they would bandle only (919) the non-returnable packages.

We have had some experience with that, especially in a state like Florida. I had some experience of my own in New York city with it, in that when the price of non-returnable bottle or can gets too close to that of the 24 twelve-ounce returnable bottle, the retailer will no longer go through the inconvenience of separating bottles, arranging for storage space for empty bottles, because there is ascertain amount of dirt connected with it, and he also has a certain amount of loss-in broken returnable bottles.

Hearing Examiner Hier: Why couldn't the 10-ounce can replace the 12-ounce returnable bottle and get rid of that business entirely and not lose it?

The Witness: We would cut, however, into our returnable bottle sales, and the cost of doing this would be much greater than if we were thinking in terms of only doing it for the off-premise market where we hope to get an increase in sales. We would also be replacing our present returnable bottle business in the non-premise outlets and, remember, that is where our strength has been.

Mr. Barton: I think His Honor's question is why were you concerned about the possibility that the can or returnable bottle would replace the non-returnable bottle.

Hearing Examiner Hier: No, it is the other way. He says his returnable bottle business is profitable, was profitable. (920) He does not want to lose it.

Mr. Barton: That is right.

Hearing Examiner Hier: Now I am asking why he rould not replace it, or substitute for it, a can or the non-aturnable bottle.

The Witness: You would do it at a considerably less profit to yourself, that is the point I am making.

Hearing Examiner Hier: You make less money on rans and non-returnables, than you do on returnables?

The Witness: That is true; and if we reduce the price on those, the difference would be—if you sold a returnsible bottle to a wholesaler or retailer at the same price that you sold a can, the can package, even though we get more money for it, now costs us more money. We have to buy the cans which are thrown away.

Hearing Examiner Hier: I know, but you have to buy the bottles, too.

The Witness: On the returnable bottles though we may get a dozen, 15 trips, and the only—in fact, on our japer cartons, we may get three or four trips from them.

Hearing Examiner Hier: Paper cartons?

The Witness: Yes, sir.

Mr. Barton: The paper packages which hold the returnable bottles.

Hearing Examiner Hier: I didn't think we were (921) selling them in paper containers.

Mr. Barton: I offer in evidence RX-154-A through F. Hearing Examiner Hier: Same objection?

Mr. Mayer: I have not seen anything but Exhibit 154, which is a 5-page memorandum.

Mr. Barton: I am sorry; D, E, and F are tables; I am sorry, Mr. Mayer.

Mr. Mayer: We have the same objection to this document, sir, based on relevancy and materiality.

Hearing Examiner Hier: Same ruling, 154-A through F will be admitted into the record.

as Respondent's Exhibit 154-A through F for identification, was received in evidence.)

By Mr. Barton:

- Q. Mr. Hallquist, what was the relationship, if any, between the preparation by you of RX-154-A through F. and the 1954 survey which has been marked RX-153?
- A. Well, much of the information which I needed to make this study, I could have only gotten from one place, and that was the 1954 survey.
 - Q. What are you referring to?
- A. I am referring to the prices to consumers of Budweiser and locals, the price to the retailer, and the wholesaler's mark-up (922) as well as the differential be-

tween 24 twelve-ounce returnable bottles and the equivalent of that in cans, let us say a 4/6 can pack.

- Q. That is the information that is contained on RX-154-D through F, is that right? Is that right by and large?
 - A. Yes, sir; that is right.
- Q. Mr. Hallquist, I note that in Exhibit 154-A, you refer to the non-returnable 12-ounce bottle as being considered a "fighting package".

Would you please explain what you meant by that term as it was used in that paragraph?

- A. Yes, sir. We were thinking of it, and I was thinking of it, and aliuding to it in the sense that it might be the package that we could use to get into the fast-growing, off-premise consumption field, which up until this time, had been, let's say, preempted by regionals, such as Falstaff, with their lower prices.
- Q. Now, were your recommendations, which are contained on RX-154-C, adopted?
- A. I would say in the main they were adopted. We did proceed with the development of the 10-ounce can and bottle, and rather than use the quart as the fighting or volume-producing package, we brought out the fifth bottle, which actually is a fifth of a gallon compared to a fourth of a gallon that a quart is.
- Q. What is the fact as to whether that is, in general, a (923) comparably priced package of Budweiser, as compared to the important regional competitors, like Falstaff?
 - A. That was our basic reason for bringing it out.
- Q. Mr. Hallquist, you referred to the fact that another aspect of the long-range plans taken in connection

with countering the sales-reverse, was the introduction of some — introduction of new packages. What has to be done by a concern such as Anheuser-Busch when a new package is to be introduced?

A. Well, it is quite an involved procedure, in that we have to study a myriad of problems before we can even give it too great a consideration.

One of the things that you would have to study first, would be the legal aspects of the thing, to find out whether or not such a package could be sold, to get information so as to determine in which states such packages might or might not be legal.

For example, Texas, Ohio, Nebraska, South Dakota, don't permit packages smaller than a 12-ounce container. Some of these are — some of these states regulate by law — those things are written into the law. There are other states in which approval of the sale of such package is up to a local ABC board, and it is handled by regulation.

- Q. Now, what was the tax problem, if any, that existed?
- A. Well, there we have the situation where some states tax (924) specific packages and have made no provision in their tax structure to tax a package such as a 10-ounce package. They may have set up in their taxing procedure a tax rate for a 7-ounce bottle and a 12-ounce bottle. Your 10-ounce bottle, therefore, would have to carry the 12-ounce tax.

By the same token, the fifth bottle would have to carry the 32-ounce tax. Now, taxes are an important part of our pricing situation, or the price we are going to bring it into the market at.

(925) Q. I see.

Now, when you talk about pricing situation, what was the relationship between the packages and the pricing situation, if any?

- A. Well, the only reason for considering the packages in the first place was to bring into the marketplace a package, even though it had several ounces less, that could compete with the strong and rapidly gaining regional and local brands.
- Q. Now, what, if any, production problems are there in connection with the introduction of new packages?
- A. Well, there is the problem of your plant capacity, the machinery that you have. We are set up to produce 7-, 12-, and 32-ounce packages, or we were at that time.
 - Q. That was at the beginning of 1954?
- A. 1954. And studies had to be made as to whether or not some of our machinery could be converted.

The costs of converting machinery had to be calculated. Perhaps machinery couldn't be converted, and we might have to put in additional equipment. Those were all factors that had to be very carefully studied and weighed.

- Q. What, if any, production problems outside your own facilities had to be considered?
- A. Well, in the can field, there never had before been produced a 10-ounce can. They, of course, would have the same problems that we have, in making what necessary adjustments to (926) their machines was necessary, whether or not they could be converted at an expense that would make it profitable for them to produce such a can.

In the case of the nonreturnable bottles that we were considering, shapes were an important factor. We had

wooden molds of every size, shape and description you could think of in trying to determine which package we thought would be most marketable, and also a shape that the can, the bottle company, could produce.

The weight of the packages in the case of the glass containers was important because they are translated into freight costs when it gets down to the wholesaler.

- Q. Now what, if any, problems are connected with determining the cost of the item?
- A. Well, our major problem there is to be able to cost the item or get a cost for the item which would permit us to sell it at a profit, and which would permit us to market it to meet the pricing situation that we were interested in meeting, and that is that of the strong local and regional brands.
- Q. Now, in connection with this costing problem, would you please explain precisely what the nature of the problem is. For example, how do you sell from the brewery to wholesalers?
 - A. We sell f.o.b. our plants to the wholesaler.
- Q. What was the nature of the problem, if any, that had to be resolved in the light of that factor?
- (927) A. We would have to determine whether the tentative f.o.b.'s that we were able to establish as a result of our asking our production department for cost figures would permit us to reach the retailer and the ultimate consumer at the price that we wanted. So we had to take that f.o.b. price from our brewery and add to it the freight from our brewery to the destination, the tax of the wholesaler's markup in order to determine whether or not we could meet the marketing situation that we wanted to meet.

- Q. With that new package?
- A. With the new package; that is right.
- Q. I show you RX-155, and ask you what it is.

(The document referred to was marked as Respondent's Exhibit No. 155, for identification.)

The Witness: It is a letter dated September 1st from Mr. F. P. Rollins to Mr. J. E. Barsi, and is a reply to his memorandum which asked for the regional managers' agreement as to the markups which we proposed our wholesalers have for these particular packages.

By Mr. Barton:

Q. I show you RX-156, and ask you what it is.

(The document referred to was marked as Respondent's Exhibit No. 156, for identification.)

The Witness: This is a letter from Mr. J. A. Huebner to Mr. Barsi. Mr. Huebner is one of our regional (928) sales managers. The letter is dated September 1, 1954, and indicates his agreement with the proposed recommended wholesaler markups.

By Mr. Barton:

- Q. Mr. Hallquist, were letters similar to RX-155 and 156 received from regional managers in other territories at or about the dates noted on RX-155 and 156?
- A. Yes, sir. They were received from all of the regional managers except the regional manager from what we call our Mountain and Pacific region, that is, John Flanigan.

Mr. Barton: Your Honor, I offer in evidence RX-155 and 156.

Hearing Examiner Hier: The same objection?

Mr. Mayer: Yes, sir.

Hearing Examiner Hier: The same rulings.

155 and 156 are admitted in evidence.

(The documents referred to, heretofore marked as Respondent's Exhibits Nos. 155 and 156 for identification, were received in evidence.)

Hearing Examiner Hier: Mr. Hallquist, you have been outlining the difficulties of new packages, this and that and the other way of getting into these off-premissales. You make Budweiser and Michelob by the most expensive brewing process there is, don't you?

The Witness: We think it is; yes, sir.

(929) Hearing Examiner Hier: In these discussions did it come up to you that you could put out a cheaper beer to fight these cheaper beers?

The Witness: Yes, we did eventually do that.

Hearing Examiner Hier: I mean at this time, was it considered?

The Witness: At this early time?

Hearing Examiner Hier: Yes.

The Witness: I would say this: that the conversation about a lower priced beer — I don't like to call it a cheaper beer, I think it would be a good beer —

Hearing Examiner Hier: 'All right.

The Witness: Our wholesalers in this survey form were asking for it, wholesalers individually, and I happened to have the region of the country where most of that kind of beer is sold, that is close to our plant. They

were constantly asking for it, and I would say that that was given serious consideration.

Hearing Examiner Hier: What was the resistance to it?

The Witness: Our sales manager, for one thing. He didn't feel, and he was very strong about this situation, that if we had two beers, our entire selling organization would have to divide their effort. In many instances our wholesalers, some of whom are exclusive in the better markets, (930) instead of devoting all their time to Budweiser, which is our baby, they would devote some of their time necessarily to the other brand.

Now, if the other brand achieved better sales success because of local marketing conditions than Budweiser had in that market, then they wouldn't be putting hardly any effort on Budweiser. In other words, we have had the thought in our mind for a long, long time. But I mean that is a powerful reason which is that you might divide the effort of your organization.

Hearing Examiner Hier: You wouldn't have any tax problem, you wouldn't have any packaging problem. The only problem I could see would be a productive problem. I don't know how much disruption it would take in your brewery to run the beer through by two different processes; I don't know anything about that, but you wouldn't have any machinery replacement problem, I take it. The only problem you would have is this so-called division of effort?

The Witness: But there is another problem which is a major one, and that is if you are going to introduce a new product into a market it is a heck of a costly thing.

Hearing Examiner Hier: Costly thing in what respect? Advertising?

The Witness: You have to advertise, you have got to support it.

(931) Hearing Examiner Hier: Well, even so-

The Witness: And during the period in which you are initially distributing this product you take away from your other major activity, and we needed every bit of effort—that is our sales manager's thinking—that we needed every bit of our effort undiluted by anything on Budweiser because, after all, that is what Anheuser Busch was built on, Budweiser.

Hearing Examiner Hier: Well, as a layman it occurs to me that if you build up your new beer, even at the expense of Budweiser, that you increased your volume and you made your money, it doesn't make any difference what the income comes from, does it?

The Witness: Well, your profit picture would be a lot less favorable with the other brand.

Hearing Examiner Hier: Your margins would be less?

The Witness: As compared to Budweiser.

The other thing is — I have had some experience. I have been the fellow that has kicked off Busch Lager, started it out, and I have started out our new brand. Busch Bayarian.

Hearing Examiner Hier: That is all post-price changes.

The Witness: But, believe me -

Mr. Barton: It is not unrelated to the price change. Your Honor.

The Witness (continuing): —it is not easy. We (932) have not had all the sales success that we have wanted.

Hearing Examiner Hier: Who is the sales manager?

The Witness: Barsi.

Hearing Examiner Hier: Mr. Barsi?

· The Witness: Yes.

Hearing Examiner Hier: Go ahead.

By Mr. Barton:

- Q. Mr. Hallquist, you have told us about the legal problems, the tax problems, the production problems that must be dealt with, satisfied and solved before new packages could be introduced. What, if any, are the merchandising problems that must be considered and solved in the introduction of new packages?
- A. I would say the first one would be the establishment of the selling price in the particular market in which you wanted to introduce the new package. In order to get that you will recall that I stated that you had to add to your f.o.b. price the taxes and the freight into the market, leaving a markup for the wholesaler.
- (933) Now, the first thing we would have, and incidentally the margins on the 10-ounce packages and on the fifths were, in general, less than they were on the standard line of Budweiser packages, by that I mean our 12-ounce bottles, our 12-ounce cans, our quarts and our seven-ounce.
 - Q. You mean the wholesaler's margin?
 - A. The wholesaler's mark-up.

Now, it required a selling job to get the wholesaler to work on such a mark-up. If he objected, it would mean

that we would have to sell e package in his market at a price higher than the leads which we wanted to compete with, those of the strong regionals and locals.

If we introduced a package in those markets, we knew that we wouldn't be successful in getting volume.

Q. You mean if you didn't introduce at the right price?

A. At the right price.

There were other problems, naturally. Some wholesalers didn't want the package. They felt that it wouldn't be salable in their market. They knew they would have to go in and ask the retailer to give them, let us say twice as much shelf space, twice as much refrigerates space. They know that the retailer has been bombarded by every brewer with a desire to put the entire line into the retail outlet, and there is a real barrier to getting distribution.

For that reason some wholesalers had to be sold of the (934) idea of going into the market with the ter as well as the twelve.

- Q. What, if any, consideration had to be given to the problem of being relatively certain that you were going to get the kind of sales in any particular market you were into in a relatively short period?
- A. Well, that is one reason we had to sell the whole saler on the mark-up that we were going to recommend for him. We had to sell him on the idea that additional volume, that the right volume, would mean additional profit for him.

He had to be thoroughly sold on the idea so that whether went out into the market that he did every possibiliting he could to assure the success of the branch

Distribution had to be gotten quickly, because, generally speaking, the advertising for the introduction of the new package was time-tabled for a certain date. It was apportant that everything that could be done to make the test successful was done, because we couldn't afford to have failures in these test markets in which we were putting the packages.

That might affect the eventual sale of the package in the rest of the country or other markets.

(The papers referred to were marked Respondent's Exhibits 157 and 158 were marked for identification.)

My Mr. Barton:

Q. I show you RX-157 and 158, and ask you what they are.

which list the present packages versus the proposed packages. They list, well, for example, in Schofield, Wisconsia the selling price of Budweiser 12-32 onnce non-returnable bottle—that is the established package in the market—shows the selling price of local brand in that market, it shows the proposed selling price to the retailer of the new fifth non-returnable package; it shows f.o.b. the freight, the state tax, the wholesaler's costs of acquishion, and the mark-up which we were recommending that the wholesaler take.

Hearing Examiner Hier: This seems to indicate that the wholesaler's mark-up on the new package would be seater, substantially greater, than it was on the old package, or maybe I am misconstruing this, and that is the

reason why I want to find out. One is 14.1 perseent, and the other is 9.5.

The Witness: You are correct about this one; you are correct about that in this instance.

By Mr. Barton:

- Q. Mr. Hallquist, how many of these pricing—let me put it this way: How many markets—first of all what is 158?
- A. 158 is a comparative price schedule for Metropolis, Illinois, and shows the comparison between the 2-12-ounce Budweiser cans, the regional brands, Stag and Falstaff, and the proposed selling price for the 24.11-ounce Budweiser can.
- (936) Q. Now, what is the fact as to the comparative dellar mark-up for the wholesaler on the 24 12 and the 24 10-ounce packages?
- A. In the 24 10 you would receive a better anark-up on the 12-ounce can dollar-wise.
- Q. But he gets a better percentage mark-up on the 10-ounce can?
- . A. He would have a slightly better percentage markup on the 10-ounce can.

Mr. Barton: Your Honor, I offer in evidence RX-13 and 158.

Hearing Examiner Hier: I take it these were just samples!

Mr. Bartons: Yes, Your Honor, and I am going task a quistion about it.

Mr. Mayer: Same objection.

Hearing Examiner Hier: Same ruling,

(The documents heretofore marked Respondent's Exhibits 157 and 158 for identification, were received in evidence.)

By Mr. Barton:

- Q. Mr. Hallquist, for how many markets were analysis similar to RX-157 and 158 prepared?
- A. Well, there are well over a hundred. That is contained in this book here, and they are for seven of the regions of (937) the country that I outlined.
- Q. In other words, for the seven regions other than the West Coast?
 - A. Other than the West Coast.
- Q. Now, what is the fact as to the situation with respect to this wholesale mark-up being, on the new packages, being, greater than the wholesale mark-up percentage-wise on the comparable old packages in areas that are further distant away from the St. Louis brewery than are Schofield, Wisconsin, and Metropolis, Illinois?
 - A. I don't understand what you mean.
- Q. Well, is there any relationship between the wholesaler's mark-up and the amount of freight that it takes in get the package into the particular market?
- A. That is true. In many areas the increased freight factor would necessitate cutting down the wholesaler's mark-up if he were to sell the package in a market in micr that you could meet the price of the fast-selling real or regional brand.
- Q. In other words, as I understand it, the freight and the wholesaler's mark-up the freight is a variable. Those are the only two variable factors there, and those are freight and mark-up.

Hearing Examiner Hier: How long were you playing around with this idea of 10-ounce cans? I notice the (938) exhibits are dated in February of 1955.

The Witness: Yes. We began consideration of the new packages in the early part of 1954, and I think some of the documents that we have—

Mr. Barton: There is a document in evidence data February —

The Witness: I think my memorandum there that was just entered is in June, right? Or May—this one was June 4, 1954; that is the one I had in mind, and I have been working on that situation for over thirty days before I wrote the memorandum.

By Mr. Barton:

Q. Well, of course, your memorandum does not have anything to do with the 10-ounce—

A. With the actual establishment of them, no.

Mr. Barton: I think, Your Honor, the testimony is date is that the 10-ounce can was a series of memoranda which were sent to various people to look into various facets of the problems in February — well, it was late January or early February of 1954, and the witness bettestified that the problems that had to be solved, production problems, legal problems, tax problems, and merchandising problems. These RX-155 and 156 are letters from the regional managers.

Hearing Examiner Hier: I understand that.

Mr. Barton: When the planning had gotten along (939) a rather advanced stage as to prices.

Hearing Examiner Hier: What strikes me though Mr. Barten, is that apparently your client did not wait until this package, change in package, or additional pack-

age was worked out to engage in this price tinkering in St. Louis County; in other words, they didn't get this thing worked out first. They went ahead and tried that mmediately.

Mr. Barton: Your Honor, I think that is perfectly clear, that this matter, the matter of the introduction of new packages, was not something that could be done overlight. In other words, for all of the reasons which we have been putting in through the witnesses, that the nature of the problem and the introduction of the new packages, the legal problem, the tax problem, the production problem, the merchandising problem, the problem created by the fact that there was not a specifically defitite price in every market where you want to market these packages, which has to be met, but a variable price in every market that you have to get your product to it at the right price.

Hearing Examiner Hier: The point I want to make

is that this price experiment was one approach.

The Witness: That is right.

Mr. Barton: That is right.

Hearing Examiner Hier: This 10-ounce package was another approach?

(940) Mr. Barton: They are not unrelated, however. Hearing Examiner Hier: I know, but they still are different. You did not exhaust the various pessibilities that have been testified to here before you took the plunge on this pricing experiment.

Mr. Barton: That is true, Your Honor. They were oing forward simultaneously. The matter was a develsoing one, and the problem of finding the answer was going forward on several fronts at the same time.

Your Honor, would this be a good time to take a recess?

Hearing Examiner Hier: We will quit now until 9 o'clock in the morning.

(Whereupon, at 4:05 p. m., the hearing in the above entitled matter was recessed to reconvene at 9:00 a.m., Friday, December 16, 1955.)

(941)

Friday, December 16, 1955

Met, pursuant to recess, at 9:00 a.m.

Before: Frank Hier, Hearing Examiner.

Appearances as before.

(942) PROCEEDINGS

Hearing Examiner Hier: All right, go ahead.

JOHN R. HALLQUIST, JR. was thereupon called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

(The document referred to was marked as Respondent's Exhibit 158-A for identification.)

Direct Examination-Resumed by Mr. Barton:

Mr. Hallquist, I show you Exhibit RX-158-A and ask you what it is?

A. This is a copy of a memorandum written by Mr. Barsi to Mr. A. D. Orthwein, who was Vice President in Charge of Production, on January 28, 1954.

Q. What does the memorandum relate to?

A. It relates to the discussions that were held during the regional meetings concerning the feasibility and desirability of producing various different sized containers than those which were presently in our line, and this one refers specifically to an 11-ounce returnable bottle and an sounce non-returnable bottle.

Q. What is the fact as to whether or not these specific packages referred to in 158-A were two of a number of packages that were being considered at that time?

A. Yes, sir. In the early stages we studied every container (943) size ranging from a six up to a twelve, and in the size which was eventually picked as a fifth, a 25 and 5/10th ounces, we ranged everywhere from 20 to 28 ounces in determining the package that was finally selected as being a package we thought we could market competitively with popular priced beers in the various local markets.

Mr. Barton: Your Honor, I offer in evidence RX-158-A.

Mr. Mayer: Same objection.

Hearing Examiner Hier: Overruled; admitted in evidence.

(The document referred to, heretofore marked for identification Respondent's Exhibit 158-A was received in evidence.)

By Mr. Barton:

Q. What was Mr. Barsi's position on January 28, 1954, Mr. Hallquist?

A. Vice President in Charge of the Brewery Sales Division.

- Q. Mr. Hallquist, I believe yesterday in the closing stages we were talking about RX-157 and 158, which has been admitted in evidence.
 - A. That is correct, sir.
- Q. And I asked you whether these were representative of other pricing analys on an individual market basis which had been made?
 - (944) A. That is correct.
- Q. Now, as a matter of fact, how many individual markets have been analyzed in terms of the similar data in the latter part of 1954 and in the early part of 1955!
- A. In the neighborhood of 200, Mr. Barton. They are contained in that black binder.

Mr. Barton: I did not, your Honor, desire to offer in evidence this large black binder. I am willing to give it to counsel for the Commission to examine, if desired

Mr. Mayer: I don't wish to look at it.

Hearing Examiner Hier: All right.

By Mr. Barton:

- Q. What is the fact, Mr. Hallquist, as to whether or not the analysis of the individual markets in terms of the prices which the popular priced beers were selling at the price to retailers and the price to the consumer level in terms of the prices which you had to have on your new packages, is one of the latter stages of the planning with respect to the introduction of your packages?
 - A. That is the last one; yes, sir.
- Q. And before that there must be a solution to the problem of the legality of the packages, the production problems in connection with the packages and all of the other problems?

A. Whether or not the costs will permit a pricing which will let you reach the markets you are seeking.

(945) Hearing Examiner Hier: Now, what would happen with reference to that, Mr. Hallquist, and where are you selling today 10-ounce cans of beer? Are you going to get into that?

Mr. Barton: Yes, Your Honor, we are going into that detail.

Bu Mr. Barton:

- Q. Now, Mr. Hallquist, would it be the fact that there would be certain there would be only certain markets in which you could introduce these new packages at a competitive price?
 - A. That is very true.
- Q. What were the factors which caused the situation that you could introduce the new packages in only certain markets?
- A. Well, I testified previously that after you had established an f.o.b. price you had to take into account the two variable factors, one of which was freight, and the other of which was the mark-up which remained for the wholesaler.

Now, if the mark-up was insufficient for the wholesaler to sell the package profitably in meeting the price of local and regional brands, then it wasn't possible to sell the package in that market and expect any sales success.

Hearing Examiner Hier: Well, the mark-up depended on the freight, plus cost of production, of course.

The Witness: And also the competitive price situation that you were expecting to meet.

(946) Hearing Examiner Hier: Yes.

By Mr. Barton:

- Q. In other words, the competitive price situation was the practical outside limit of the price at which that package could be retailed in the market?
 - A. That is correct.
- Q. And the other two factors that intervene between the f.o.b. and that competitive price were the freight to the market from the brewery and the wholesaler's mark up!
- A. And the only one that could be termed strictly variable would be the wholesaler's mark-up.
- Q. Mr. Haliquist, were there other problems that had to be solved in connection with the introduction of these new packages besides the problems that you have referred to heretofore?
- A. Well, yes. The matter of getting, let us say, legs clearances in those states where the alcohol control commissions were the ruling agency in se far as the sale of specifically sized containers in a market was concerned and in that connection we had very considerable opposition from some brewers and some brewer associations

In fact, in some markets local brewers used newspaper advertising to discredit the smaller-sized package, and warning the public to beware of a 10-ounce package. Some of it was particularly vicious advertising in that they also alleged that beers that were shipped for long distances suffered quality-wise (947) as compared to beers that were produced locally, which I don't think was germane to the issue at hand at all.

(The document referred to was marked as he spondent's Exhibit 159 for identification.)

By Mr. Barton:

- Q. Mr. Hallquist, I show you RX-159, and ask you what it is?
- A. This is a copy of an advertisement in the Washington Post and Times-Herald on Wednesday, February 9, 1955 by the Valley Forge Distributing Company, and relates that "Here are the facts that have not been told about the full 12-ounce can,"

Mr. Mayer: I have to interrupt, Mr. Examiner, but I don't think the witness should explain this exhibit, but merely identify it and offer it, and we will find out if it is relevant then.

Mr. Barton: I quite agree.

By Mr. Barton:

- Q. Let me ask you one further question, Mr. Hall-quist: Is the Valley Forge Beer one of your important competitors in the Washington market?
 - A. Very definitely so.

Mr. Barten: Now, if Your Honor please, I offer RX-159 in evidence.

Mr. Mayer: I, of course, object to this on the grounds of relevancy and materiality. I don't think any action taken by a competitor in response to an action by Budweiser in (948) another market to defend a price discrimination in St. Louis can possibly be relevant to the proceeding.

Hearing Examiner Hier: The only relevancy I see, Mr. Mayer, is what you might call showing some of the problems that they were up against which was, perhaps, part and parcel of the entire picture. I mean, if the picture is relevant, perhaps some of the problems which they

sought to solve are relevant also. This is pretty fat fetched though, Mr. Barton.

Mr. Barton: I think Your Honor has put your face on the relevancy of it, and that is entirely the rease for the offer, that it is offered to illustrate the nature of the problem that faces a brewery, a company, which shaving serious sales reverses, and is attempting to reast to that by various means.

Hearing Examiner Hier: This is an attempt to increase sales resistance?

Mr. Barton: That is right.

Hearing Examiner Hier: To what is described hereas an innovation in the beer industry.

Mr. Barton: That is right.

Hearing Examiner Hier: For that purpose, and for that purpose only, I think it may be relevant. It is admitted for that purpose only.

(The document referred to, heretofore marked for identification Respondent's Exhibit 159 was received in (949) evidence.)

Hearing Examiner Hier: 'I agree with Mr. Mayer now, Mr. Barton, I might as well make it clear, that boycotts or attempted boycotts or unfair advertising or any thing else which this exhibit may, in your opinion, exemplify, of course, is not a defense to a price discrimination case.

Mr. Barton: We are not offering it for that purpose. Your Honor.

Hearing Examiner Hier: All right.

(The documents referred to were marked as Respondent's Exhibits 160 and 161 for identification.)

B. Mr. Barton:

Q. I show you RX-160 and 161 and ask you what they are, Mr. Hallquist?

Hearing Examiner Hier: They show on their face what they are, Mr. Barton; we can dispense with the destification.

Mr. Barton: I will just identify them for the record. RX-160 is an advertisement of the News-Tribune of —

Hearing Examiner Hier: It is a Massachusetts paper. Mr. Barton: (continuing) — of the Harvard Brewing Company of February 9, 1955, a Massachusetts paper; and RX-161 is an advertisement of the Harvard Brewing Company in the Boston Post of February 23, 1955.

Hearing Examiner Hier: They are in the same category as the previous exhibit, and will be admitted with the same (950) limitations and under the same circumstances.

(The documents referred to, heretofore marked for identification Respondent's Exhibits 160 and 161 were received in evidence.)

(The document referred to was marked as Respondent's Exhibit 162-A through -L for identification.)

Mr. Barton:

- Q. I show you, Mr. Hallquist, RX-162-A through -1., and ask you what it is?
- A. This is a meeting guide for the introductory meet-
- Q. And you say a meeting guide; what do you mean, meeting guide for meetings to be held of whom?

John Hallquist, Jr., tor Respondent - Doort

A. With our own people, our own sales prople, and wholesaler organizations in markets in which the pack ages were to be introduced in a short while; and it gaves sales tips to our people to try to give them information as to how best to present the packages to the retailer, and what other action the sales people should take.

Q. What is the approximate date of RX-162-A through -L?

A. About September 1, 1955.

Q. And what - I think you said -

A. Excuse me, that was September 1, 1954.

Q. 1954, was it not?

A. Yes, sir.

(951) Q. I think you said that it covered the products, the 10-

A. The 10-ounce can and the fifth bottle.

Mr. Barton: And the fifth bottle.

Your Honor, I offer in evidence RX-162 A through L. Hearing Examiner Hier: Same objection?

Mr. Mayer: Yes, sir.

Hearing Examiner Hier: The same ruling, 1924 through -L is admitted in evidence.

(The document referred to, heretofore marked for identification Respondent's Exhibit 162-A through -L was received in evidence.)

(The document referred to was marked as Respondent's 163-A through -E for identification)

By Mr. Barton:

Q. I show you RX-163-A through -E and ask you what it is?

A. This is also a suggested meeting guide and it is or the Bud Fifth alone, prepared for the use of the regional sales manager when he was holding meetings with wholesaler organizations where we were, in whose markets we were, about to begin sales of the Bud Fifth.

Q. What is the approximate date of RX-163?

A. This was prepared a very short time after the meeting guide or the combined purpose of kicking off the Bul Fifth and 10-ounce can.

Q. And that was shortly after September 1, 1951? (952) A. That is correct.

Mr. Barton: I offer RX-163-A through -E in evidence. Mr. Mayer: Same objection.

Hearing Examiner Hier: Same ruling; admitted in evidence.

(The document referred to, heretofore marked for identification Respondent's Exhibit 163-A through -E was received in evidence.)

(The document referred to was marked as Respondent's Exhibit 164-A through -E for identification.)

By Mr. Barton:

- Q. I show you RX-164-A through -E and ask you what it is?
- A. This is a suggested meeting guide for regional sales managers in their introductory meeting with wholesalers who were about to begin the distribution of the 10-ounce Budweiser can. It also gave an outline of how the meeting should be conducted, and the pertinent selling points on the 10-ounce package.

- Q. What was the approximate date of 164 A through E.?
 - A. In September, 1954.

Mr. Barton: I offer in evidence 164-A through E. Your Honor.

Hearing Examiner Hier: Same objection?

Mr. Mayer: Yes, sir.

Hearing Examiner Hier: Same ruling.

(953) (The document referred to, heretofore marked for identification Respondent's Exhibit 164-A through -E was received in evidence.)

(The documents referred to were marked as Respondent's Exhibits 165, 166 and 167 for identification.)

By Mr. Barton:

Q. I show you, Mr. Hallquist, RX-165, 166, and 167 and ask you what they are? I might say why don't we take them individually, and let the first one be 165.

A. 165 is a map of the United States, and it is entitled, "Ten-Ounce Can Markets," and this, incidentally, is as of March 31, 1955.

The map has not been brought up to date since that time, and it reflects the distribution situation at that particular time.

- Q. Of 10-ounce cans?
- A. Of 10-ounce cans.

The areas that are solidly colored—you can't tell it on the photostat—are the areas in which the 10-ounce can had been introduced up until that date, March 31.

The areas that have the diagonally drawn lines arough them are the states in which at that time the state laws or state regulatory bodies would not permit up sale of the 10-ounce can.

Hearing Examiner Hier: And the uncolored areas, I (54) take it, were virgin territory?

The Witness: Yes, sir. After our testing had been completed to a greater extent, we planned to move into additional markets.

Hearing Examiner Hier: Well now, how about bringing it down to date? Have you gone into any further markets?

The Witness: Yes, sir; we have.

Mr. Barton: That will be our next item of evidence. Hearing Examiner Hier: All right.

Mr. Barton: I offer RX-165 in evidence.

Mr. Mayer: Same objection.

Hearing Examiner Hier: Same objection? Same ruling. 165 will be received.

(The document referred to, heretofore marked for identification Respondent's Exhibit 165 was received in evidence.)

Bu Mr. Barton:

- Q. What is RX-166?
- A. This is a map of the United States on which the distribution pattern of the 12-fifth non-returnable bottle is portrayed as of March 31, 1955.
 - Q. What is the explanation of the hatching?
- A. The solidly colored areas are the areas in which the fifth had been introduced up until that date, and the

the areas which are shaded with a diagonally drawn line are the states in which it (955) was not legal at that time to sell the package.

Mr. Barton: I offer RX-166 in evidence.

Mr. Mayer: Same objection.

Hearing Examiner Hier: Same ruling.

(The document referred to, heretofore marked for identification Respondent's Exhibit 166 was received in evidence.)

By Mr. Barton:

Q. What is the explanation with respect to RX-167.

A. On this map is indicated the 10-ounce non-returnable bottle markets in which we were selling as of March 31, 1955. Those are indicated by the solidly colored areas, and again the diagonally drawn lines across states indicate states in which the package is not legal.

Mr. Barton: I offer RX-167 in evidence.

Mr. Mayer: No objection.

Hearing Examiner Hier: Admitted.

(The document referred to, heretofore marked for identification Respondent's Exhibit 167 was received in evidence.)

By Mr. Barton:

Q. Mr. Hallquist, what is the fact as to whether or not RX-165 through 167 were or were not prepared for this litigation?

A. They were not.

Hearing Examiner Hier: It wouldn't make any difference (956) anyhow.

by Mr. Barton:

Q Mr. Hallquist, are efforts still being made Anneuser-Busch to obtain favorable rulings from those states which you stated would not permit the marketing as of the date of March 31, 1955 of these packages?

A. Very definitely so.

Mr. Mayer: I object to that; that is not relevant at all to this defense, is it?

Hearing Examiner Hier: You want to know whether he is trying to get those states he presently cannot get into, to let them get into?

Mr. Barton: That is right, Your Honor.

Hearing Examiner Hier: Well, I don't think it makes much difference. It simply shows what I think everybody can assume anyhow. He is trying to sell the beer every place he can. You may take the answer, Mr. Reporter. He answered, did he not?

Mr. Barton: Yes, sir.

Bu Mr. Barton:

Q. Now, Mr. Hallquist, did the management of anheuser-Busch find that the introduction of new packages, the 10-ounce can and the fifth, was the entire answer to the price problem?

A. No, sir.

Hearing Examiner Hier: I don't have it yet in my mind. (957) though, gentlemen — maybe it has escaped me here—these maps show this situation as of March 31, 1855. But when did this testing of these various sized containers begin?

The Witness: I don't know the exact date.

(The document referred to was marked as Respondent's Exhibit 173 for identification.)

By Mr. Barton:

Q. I show you RX-173, Mr. Hallquist.

Hearing Examiner Hier: It is coming along!

Mr. Barton: Yes, Your Honor. I think we might as well put it in now; we are putting it a little ahead because there are products that were put in — we planned to put it in later — but I think it will clear up the record.

By Mr. Barton:

Q. I show you RX-173, and ask you what it is!

A. This is a table and is headed "New Packages and New Products Introduced By Anheuser-Busch Since January 1, 1954 To Meet Competition."

The report covers the period January 1, 1954 through September 30, 1955. There are headings for Budweiser, Busch Lager, and Busch Bavarian Beers.

Also under the Budweiser heading are listed the 10ounce cans, the 10-ounce non-returnable bottle, the 10ounce returnable bottle, the fifth non-returnable bottles and the fifth returnable bottles.

- (958) Under each one of those we indicate the month that it was first sold in a state, and the states are all listed on the extreme lefthand side of the form.
- Q. Those are the states in which any one of these products has been introduced?
- A. Introduced, yes; and the number of markets in the state which were shipped into the state in 1955.

For example, in Alabama we first sold the 10-ounce on in December, 1954, and we have shipped it to a total faine wholesaler locations, shipping points, in that state is 1955.

Q. What is the earliest date in which the 10-ounce on was introduced any place, according to this map?

A. In December, 1954 the 10-ounce non-returnable bottle—in December, 1954; the 10-ounce returnable bottles in April of 1955; the fifth non-returnable bottles, the first in New Jersey, in November of 1954; the fifth returnable bottles, the first introduction of that was in March of 1955.

Hearing Examiner Hier: Then summarizing there were none of these introduced anywhere prior to your price reductions in St. Louis?

The Witness: No, sir. We didn't have the package, we didn't have the need for the package, at that time.

By Mr. Barton:

Q. In other words, you were not able — what is the fact as to how long it took you to get the packages out in the market after (959) the initial planning was started?

A. Well, from the time that we first began our consideration it was almost a year.

Hearing Examiner Hier: That initial planning does not mean too much, Mr. Barton. I mean, I can get an idea in October and not even get to thinking about it seriously before the following April.

How long did it take you after the decision was once made to introduce 10-ounce cans where, if and how you would, and where it was feasible, before they were actu-

ally introduced? It seems to me that is the important consideration.

Mr. Barton: I think you are right.

The Witness: I would say eight months.

Hearing Examiner Hier: Eight months? All right. Would that same approximation fit the fifth: the fifth returnable and non-returnable, and the 10-ounce returnable and non-returnable?

The Witness: Approximately so; yes, sir.

Hearing Examiner Hier: All right.

Mr. Barton: Your Honor, I can wait or offer it now. Hearing Examiner Hier: You can offer it now.

Mr. Barton: I offer RX-173 in evidence.

Mr. Mayer: Same objection.

Hearing Examiner Hier: Same ruling, 173 is admitted.

(The document referred to, heretofore marked for (960) identification Respondent's Exhibit 173 was received in evidence.)

By Mr. Barton:

- Q. Mr. Hallquist, I believe I asked you whether the mere introduction of the new packages was considered by Anheuser-Busch to be a complete answer to this problem of price competition with the regional, important regional beers in various markets of the country, and you told me that it was not. Now, would you please explain the further problems that you had?
- A. Well, we found that in many markets we had some serious problems in trying to market the 10-ounce container in conjunction with the 12-ounce container, so that

in April of this year we determined to take some further sups and experimenting, and in the City of St. Joseph, Missouri, we removed all of the 12-ounce packages that we were at that time selling, the 12-ounce returnable bottle, the 12-ounce can, the 12-32-ounce package, in order that the only packages that we would have would be the bounce containers and the fifth containers.

That introduction was made without the benefit of any large-scale advertising campaign. We extended such a test to Shreveport, Louisiana, where we removed all of the 12-ounce and 12/32-ounce containers from the market, and substituted for them the 10-ounce containers. That experiment was with the benefit of a full-scale advertising campaign with special copy in those markets.

- (961) In those markets, of course, we met the locally-priced beers, such as Falstaff and other regional and local producers. Those tests have been extended to other areas. In fact, such a test is going on right now in the State of Utah.
- Q. Mr. Hallquist, you mentioned back in your examination three avenues which have been followed in this developing effort to meet the competitive problem, you have, and one of them is that you have introduced new products.

Now, will you tell the Examiner the circumstances under which these new products were considered and introduced?

A. Well, Busch Lager was the first new product which we developed and introduced. The planning for that began in the fall of 1954 and, as you know, was marketed in the St. Louis area beginning March 15, 1955.

- Q. What was the circumstance which led up to the marketing of Busch Lager?
 - A. I am not sure just what you mean, Mr. Barton.

(The document referred to was marked as Respondent's Exhibit 167-A for identification.)

Ba Mr. Barton:

Q. I show you RX-167-A and ask you what it is!

A. This is a compilation of the annual total of sales in the St. Louis market for package Budweiser, both oppositions and off-premise in 1953, 1954, and the first menths of 1955.

It indicates that in 1954 we had an increase in sales of (962) Budweiser through the on-premise outlets. It was a fair increase, and it indicated that Budweiser at the popular prices did get some additional business through the on-premise outlets.

However, the major share of our sales increase was through the off-premise outlets. In that avenue our sales better than tripled during 1954 as compared to 1953, and for that reason that was one of the factors in our decision to market a popular-priced brand of beer in St. Louis.

Another factor in that decision was the fact that during the time of our meeting of local prices in St. Louis with Budweiser we had never attained a share of the market which was as much as some of our competitors had had, let us say, during the preceding five years, and it raised a question in our mind as to whether or not there weren't a lot of people who didn't particularly ears for the taste of Budweiser; and for that reason it was determined to bring out another brand of beer which would be competitive with the regionally produced brands.

such as Falstaff and others, which would compete them in both taste-wise and price-wise.

Hearing Examiner Hier: Mr. Barton, is there a mistake in this exhibit?

Mr. Barton: How is that, Your Honor?

Hearing Examiner Hier: In 1953 you had 69 per cut of the market.

(963) Mr. Barton: No, that is 69 per cent of our sales.

Hearing Examiner Hier: Oh.

The Witness: Were in the on-premise.

Mr. Barton: They were in the on-premise outlets.

Hearing Examiner Hier: You took a decrease in 1954 ren though the absolute total is much higher?

The Witness: Yes, our share of that.

Mr. Barton: Our distribution pattern as between onpremise and off-premise outlets switched to a more, what we considered to be, a more healthy position. In other words, Your Honor, as you will recall the testimony of Mr. Shine as to industry distribution—

Hearing Examiner Hier: Yes.

Mr. Barton: Your Honor, I offer in evidence 167-A.

Mr. Mayer: No objection.

Hearing Examiner Hier: Admitted.

(The document referred to, heretofore marked for identification Respondent's Exhibit 167-A was received in evidence.)

Mr. Barton:

Q. You testified that it was in the fall of 1954 that its decision was made to look into producing a new beer. How long did it take to develop that?

A. It took from the fall of 1954 until the time that we introduced the new product on March 15th.

(964) Originally, the assignment was given to our brew masters to produce a different type of beer, a, let's say, lighter and milder type of beer, produce several different types so that our management could taste them and test them, and determine which, in their minds, would meet with public acceptance and could be sold competitively price-wise and taste-wise with brands such as Falstaff and other fast-growing regional and local competitors.

(The document referred to was marked as Respondent's Exhibit 168 for identification.)

By Mr. Barton:

Q. I show you RX-168, and ask you what it is?

A. This is a timetable which I prepared early in January for the introduction in St. Louis of both the 10-ounce returnable bottle and other 10-ounce packages, and the new product which we planned to introduce.

Q. You say you prepared this in January of 1955!

A. That is correct, sir.

(The document referred to was marked as Respondent's Exhibit 169 for identification.)

By Mr. Barton:

Q. I show you RX-169 and ask you what that is?

A. This is a copy of a memorandum I addressed to Mr. Barsi on February 16, 1955 in which I indicated that I was attaching a map which showed the areas in Mis-

souri and Illinois in which our (965) wholesalers would be competitive with local brands of beer at the f.o.b. prices that I had listed, and asked for approval to proreed with the acquisition of point of sale material and other things that were necessary to be done to market the product.

(966) The document referred to was marked Respondent's Exhibit 170 for identification.)

By Mr. Barton:

Q. I show you RX-170 and ask you what it is. Hearing Examiner Hier: Off the record.
(Discussion off the record.)
Hearing Examiner Hier: On the record.
Mr. Barton: I will strike that question.

By Mr. Barton:

- Q. Mr. Hallquist, you described RX-168 as a timetable which was drawn up by you in January of 1954 for the introduction of Busch lager and the ten-ounce returnable bottle.
 - A. That is correct.
- Q. In St. Louis, to synchronize with the restoration Budweiser prices in St. Louis?
 - A. That is correct.
- Q. Was that timetable changed subsequent to the preparation of RX-168?
 - A. Yes, sir; it was.
 - Q. I show you RX-170 and ask you what it is.
- A. This is the revised timetable set forth in a memoradum by me to Mr. Barsi on February 24 and indi-

cates that the original timetable for 10-ounce returnable Budweiser and Busch Lager had become obsolete and therefore, I proposed the schedule that followed.

(967) Q. Would you please explain the significance of this revised timetable, the purpose of it and the consideration which led up to it?

A. Yes, we had determined that we would not market the 10-ounce returnable bottle and can in the City of St. Louis. Our reasons for that were that we didn't think it necessary or wise to sell Budweiser in these ten-ounce packages in the same prices as our regional and local competitors in St. Louis and, further, that we would be, in effect, competing with ourselves because the new product which we were bringing out was to sell at the same prices as the regional brands such as Falstaff and the others on the market.

Mr. Barton: Now, I offer in evidence RX-168, 169, 170.

. Mr. Mayer: Same objection, Mr. Examiner.

Hearing Examiner Hier: Same ruling. The objections are overruled, and they are admitted into evidence. 168, 169 and 170.

(The documents referred to, heretofore marked for identification, Respondent's Exhibits 168, 169, 170, were received in evidence.)

By Mr. Barton:

Q. What was the timing for the introduction of Busch Lager in connection with the increase in the price of Budweiser in St. Louis?

(968) A. In the original timetable we were going to introduce the 10-ounce returnable bottle and the can approximately March 15 and Busch Lager on about April 1.

After we had decided not to market it, the 10-ounce returnable bottle and the can in St. Louis, we moved the date for the introduction of Busch Lager up to March 15. Our reason for that, of course, was that we felt there would be a considerable shifting of buying habits after we increased the price of Budweiser and we wanted our Busch Lager in the market so that we could, at least, get an opportunity to sample some of those consumers with our new brand.

- Q. What was the date on which you increased the price of Budweiser?
- A. We announced the increase on February 16 and it became effective on March 1. We introduced Busch Lager on March 15.
- Q. Now, Mr. Hallquist, what plans were made prior March 1, 1955, with respect to the introduction of Busch Lager in markets outside St. Louis, the State of Missouri and the State of Illinois?
- A. We also decided to test-market Busch Lager in seven wholesaler markets in the southern part of Texas.

(The document referred to was marked Respondent's Exhibit 171 for identification.)

Ba Mr. Barton:

- Q. I show you RX-171 and ask you what it is?
- (969) A. That is —
- Q. That is RX-171 no, the pages are numbered: 30 ahead.

- A. That is part of a folder which we had prepared and it is included inside of the folder.
 - Q. I see.
- A. The folder was given to our wholesalers at the meeting in which we introduced Busch Lager to them.

Exhibit RX-171 is a sales meeting guide which was prepared in order that our wholesaler could hold a good sales meeting with his own sales organization.

- Q. What was the main pitch made in the presentation?
- A. Basically, up until this time, the wholesaler with Budweiser had been competing virtually in the national brand market, which is about 25 per cent of the total beer market.

With Busch Lager he would have an' opportunity to get into the fast-growing local and regional brand field, or the popular-priced field and that, in effect, the wholesaler under that basis would have the opportunity of going after some part of a 100 per cent of the beer market. He would have Budweiser for the 25 per cent of the market, which was National Brands and, actually, that 25 per cent is slipping all the time and he would also have Busch Lager to go into the increasing popular-priced brand market.

- Q. Mr. Hallquist, what is the fact as to whether or not the sales pitch as contained in RX-171, which you have just (970) referred to is not also the basic reason which Anheuser-Busch had for the introduction of Busch Lager?
 - A. Very definitely so.

Mr. Barton: I offer in evidence RX-171, your Honor. Mr. Mayer: Same objection.

Hearing Examiner Hier: Same ruling. 171 is admitted.

(The document referred to, heretofore marked for identification Respondent's Exhibit 171, was received in evidence.)

By Mr. Barton:

- Q. Now, Mr. Haliquist, was there a decision to bring out any other new products, other than Busch Lager?
- A. Yes, sir. We introduced Busch Bavarian, an additional popular-priced beer, in the entire state of Kansas and the Metropolitan area of Kansas City, Missouri, market. The sales began on August 28, 1955.
- Q. Now, what was the purpose of introducing a new brand, Busch Bavarian, other than Busch Lager which had already been introduced?
- A. Weil, frankly, our sales success with Busch Lager wasn't what we had hoped for and we relt that an entirely new concept was necessary.
- I might explain that when we started out with Busch 1971) Lager we thought that it would be a good idea to identify it very closely with Budweiser, feeling that the Budweiser prestige might carry over into Busch Lager. The label on Busch Lager is very much the same as that of the Budweiser in that it makes use of our traditional colors. We advertise it as a product by the brewers of Budweiser.

Unfortunately, the beer wasn't too well received.

This is the sixth can pack of Busch Lager, I mean it in the traditional Anheuser Busch red and green colors.

Q. In fact, it says, "by the brewers of Budweiser".

A. By the brewers of Budweiser. That was the big pitch and we felt that the well-known name of Anheuser-Busch and Budweiser would help to carry the introduction of the brand.

However, in, I believe it was June of this year, or July, we weren't satisfied with the way Busch Lager was moving, the way it had been accepted, and we went into an entirely different approach to the problem.

Q. Please describe that different approach.

A. Well, we have got a new advertising agency for one thing. I mean the Gardner Advertising Agency was selected to handle the Busch Bavarian advertising and the copy. The basic idea in back of it is that we are separating it as widely as we can from Budweiser. We expect this product to stand on its own feet.

The other thing that we have is an entirely different (972) approach here in that we have tried to bring some romance into the marketing of this new beer. The mountain Alps, the snow it makes a very appetizing and appealing package in itself. There is a continuity in what we have done. The label is carried over into the point-of-sale material; the basic design of the label on the carton is carried over into point-of-sale material.

Q. Advertising?

A. Into consumer advertising. Even truck design is, truck painting design is, in the same general idea as this. In other words, it is a beer for America's new way of living, happy times, gay times. It is not as stilled or just stylized as that one is.

Q. You mean as the Lager?

A. That is right; the Busch Lager.

Q. What, in fact, did you find was the appealability of the word "Lager" in connection with advertising of a beer?

A. Well, there are some people who think that they didn't want a Lager beer. I have run into that in New York in many instances of people who say that "I don't like Lager beer; I can't drink it."

Hearing Examiner Hier: What is the difference in the product in these cans?

The Witness: There was a very considerable difference in the original Busch Lager which had one taste. We 1973) determined in the early stages that apparently people didn't particularly like the taste either so that we changed the product very considerably.

Hearing Examiner Hier: Now, the change was not in the brewing process, but in the ingredients?

The Witness: In the taste.

Now, I am not a brewer, so I couldn't tell you what makes one taste a little different from the other.

Hearing Examiner Hier: What was the matter with Busch Lager, why didn't it sell? It wasn't all advertising, was it? There was something else. Was it taste?

The Witness: It was taste, definitely.

Hearing Examiner Hier: Doesn't it take a while to stabilize a new beer on the market? I mean, after you have got it on the market, doesn't it fluctuate back and forth, like working the bugs out of a new machine?

The Witness: I don't think I am qualified to answer. although I would say that once you have determined what you are going to do, then your controls can be such that you get that taste.

Mr. Barton: Is your question directed to the controls on the quality?

Hearing Examiner Hier: Yes, production controls.

The Witness: I don't think so. I do think if you made a beer that didn't meet public taste then you would work (974) toward changing that taste and, perhaps go through an evolution of changes before you found the one that you wanted.

Hearing Examiner Hier: Well, this Bavarian beet is lager, isn't it?

The Witness: Well, lager means aging; it is not are, as long as Budweiser, let me put it that way.

Hearing Examiner Hier: No, I know that Budweiser uses this other process, but Bavarian is aged or lagered just the same as Busch, isn't it?

The Witness: That is correct, sir.

Mr. Barton: All beer, in a sense, is lagered.

Hearing Examiner Hier: Yes, except some of theselfly-by-night breweries that sprang up after the problemition era.

Mr. Mayer: May we go off the record for a moment (Off the record discussion.)

By Mr. Barton:

Q. Mr. Hallquist, I show you RX-172 and ask you what it is?

(The document referred to was marked Respondent's Exhibit 172 for identification.)

A. Well, this is a talk that was prepared for Mr. Huebner, who was the Regional Sales Manager, in whose

sales area Kansas and Kansas City, Missouri, are located. This was prepared for the introductory meetings of Busch Bayarian to our wholesalers in that area.

(975) Mr. Barton: Your Honor, I offer in evidence 172.

Mr. Mayer: Same objection.

Hearing Examiner Hier: Same ruling; admitted.

(The document referred to, heretofore marked for identification Respondent's Exhibit 172, was received in evidence.)

By Mr. Barton:

- Q. Mr. Hallquist, what has been your association, if any, with the introduction of Busch Bayarian?
 - A. I have worked very closely with it, Mr. Barton.
- Q. Will you please tell the Examiner what you have done in connection with it?
- A. I have been and this concerns both Busch Lager and Busch Bavarian I have been in from the very becinning stages, the development of Busch Lager, the arton designs, the acquisition of the cartons, crowns and other materials, the preparation of the point-of-sale material.

I have set up and held the meetings with the wholesalers in the areas that we were going to market the product, develop the pricing factors. In fact, I think I have done about everything, not by myself but in conjunction with other departments of our company.

Q. With particular attention to Busch Bayarian, what was your connection?

- A. At this particular time I began in the initial stages (976) with Busch Bavarian, before it was ready for introduction on the market, attended meetings in Kansas and Kansas City, and at Wichita, and have made trips into that territory since the introductory date. In fact, I was—
 - Q. Which was what date?
 - A. August 28.
 - Q. Of 1955?
 - A. Of 1955.

I was in Wichita just about two weeks ago at which time I held a meeting with all of the Kansas waslessless to determine the sales progress of Busch Bayarian.

- Q. What has been the initial reaction to the introduction of Busch Bayarian in Kansas?
- A. I would say that we are very much encouraged Hearing Examiner Hier: Who made the decision to introduce these two beers?

The Witness: It was a management decision, after discussion —

Hearing Examiner Hier: You are the third man who has told me that top management made the decision. Who is top management?

The Witness: Well, in the final analysis, the President of the company, Mr. August A. Busch, would make the final decision. However, there were other people who would participate in a discussion about a new product of this kind.

(977) Hearing Examiner Hier: Now, while I are on the point, who made the decision to cut the price of beer in St. Louis?

The Witness: That again was a management decision.

Hearing Examiner Hier: Mr. Busch?

The Witness: In the end, by the President of the company, Mr. Busch. However, I might say this: that it was after discussion and I made the recommendation that we make the original cut.

Hearing Examiner Hier: Were you in on all these secusions with Mr. Busch when he made the decision!

The Witness: Yes, sir. I might say this: That you will recall I was Assistant Regional Sales Manager in charge of our branches. I then became the Regional Manager in charge of the branches. The City Sales Department is considered in with a group of branches.

When I left that position in September of 1952, I became Sales Manager of the Midwest Region. We had a reorganization, policy of decentralization, so that the tranches were put into the territory of the Regional Sales Manager, and we set up the country in eight regions.

I was Regional Manager of the Midwest Region. The sixtes in that Region were Missouri, Kansas, Iowa, Nebraska, North and South Dakota and Minnesota. St. Louis was continued to be under my jurisdiction.

I think that I have done everthing—after all, (978) Missouri is the biggest state, sales-wise, in the seven that I had; a substantial part of the sales volume in the State of Missouri came from St. Louis, so I would naturally spend a lot of time and effort with that.

I think I have done everything from let's say a sales management standpoint that I could during the years, in which that was one of my responsibilities to increase sales in St. Louis, and I had inaugurated the split in sales force, so that we had an off-premise division and an on-premise division.

I had started the peddle system which finally got into full operation in early 1954. When the subject of St. Louis was discussed, Mr. Busch offered me and offered to increase the sales staff in St. Louis, double it, and it was my opinion that increased sales manpower would not produce any results. I didn't think that a greatly expanded advertising program would be productive of sales results, commensurate with the cost unless we had a lower price, and it was my recommendation to Mr. Busch that if we wanted additional sales volume from St. Louis, that we would have to reduce the price.

Now, my recommendation was acted upon by him and the other members of top management.

Hearing Examiner Hier: You did not feel that the introduction of a "fighting brand" or this Busch Lager, for instance, in St. Louis, would produce the results that you (979) wanted?

The Witness: Not immediately; no, sir. It takes time. First of all, we were, in effect, buying time by a price reduction. It takes time to develop new packages, new products. Much study has to be done, and the cost of the introduction of some of these specific ways of meeting that price competition are quite expensive. They are expensive advertising-wise.

Bu Mr. Barton:

Q. As a matter of fact, Mr. Hallquist, do you have the advertising expenditures that have been devoted to the ten-ounce can in 1955?

- A. Yes, sir. Between the you are talking about the ten-ounce can or the introduction of I have it summed up here as a total.
- Q. Let us take the new packages, that is, the tenonnce can-
 - A. The fifth.
- Q. The fifth. What has been the advertising devoted to that?
 - A. In 1955 \$517,500.
- Q. And that is in a number of, something less, something considerably less, than the total United States, it is in these various areas that are listed on RX-173, I believe?
 - A. That is correct, sir.
- Q. What has been what was the amount of advertising money (980) devoted to pushing Busch Lager in St. Louis in 1955?
 - A. In St. Louis alone \$246,400.
 - Q. And that was in 1955?
- A. And in the balance of the area in which we are selling Busch Lager, \$183,700.

Busch Bavarian, and we have put a greatly accelerated advertising campaign in back of that in Kansas \$310,000 for Kansas City, Missouri, and the State of Kansas. Actually—

Examiner Hier: How much — pardon me, go ahead. The Witness: Yes, sir.

Actually, we have had a total in 1955 of \$1,283,000,

Hearing Examiner Hier: How much did it cost you to advertise this price reduction?

The Witness: In St. Louis? During 1954? \$157,900. Hearing Examiner Hier: Go ahead.

By Mr. Barton:

- Q. Mr. Hallquist, when the decision was made to reduce the price 25 cents in January, what was the background against which that decision, that recommendation of yours, was made?
 - A. Well, I had I don't quite follow you.
- Q. What were the circumstances under which it was made?
- A. Well, actually, I testified previously that our salhad dropped very substantially throughout the country in November and December of 1953, and we were seeking additional sales volume for the company.
- (981) We also, as I testified before, were seeking information. We were in the nature of experimenting trying to find solutions to our long-range problems. Yet might say that we were also in a measure buying the in order that we could explore more fully other avenues which would let us meet the competition of fast-growing regional brands, such as Falstaff.

Hearing Examiner Hier: Tell me this. On that point was another reason for dropping the price in St. Louis and St. Louis County, in addition to those that you have numerated, including buying time, to achieve a certain increase in volume, whereby the expensive process of putting two new products and then only one was contemplated on the market, could be financed?

The Witness: I can't tie those together.

Mr. Barton: Your Honor, I don't think there has been any testimony —

Hearing Examiner Hier: Certainly, there has not been any testimony; that is why I am asking the question.

Mr. Barton: No, that these products the two new products were — that a decision had been made.

Hearing Examiner Hier: No the decision had not been made but they were being studied, the process of putting out — all right, we will go back to the ten ounce, fifth, and this, that and the other thing, new containers. He has testified that was a new process, too.

(982) Mr. Barton: That obviously was one of the considerations.

Hearing Examiner Hier: I am wondering whether one of the considerations in lowering the price was to obtain a boost in volume and, consequently, a partial, boost in profit whereby to finance these merchandising experiments, money for which you had under consideration at the time.

The Witness: I wouldn't say in that manner, Mr. Hier. I would say that as we went along into 1954, the drop in sales that we were having everywhere became more precipitous and, frankly, we did want additional volume but I don't think we considered it from the standpoint that we were specifically trying to get some additional revenue to finance these packages: I don't think we thought of it in that way and, frankly, I would say that I can't answer the question.

Hearing Examiner Hier: Well, of course, I think it is generally conceded that your employer is a very well-financed concern. I was not meaning to imply that they were going broke but, nevertheless, you detailed here this expensive process of trying to get into the off-premise market to a great extent.

The Witness: That is correct.

Hearing Examiner Hier: And I was wondering whether that was not, perhaps, a consideration for top management, perhaps instigated by the Comptroller or the financial end of (983) it, but you say you can't answer so that is that. Go on.

By Mr. Barton:

- Q. Now, isn't it a fact, Mr. Hallquist that the price reduction created a bigger base for Budweiser and for Budweiser products in St. Louis?
 - A. There is no doubt about that.
- Q. In other words, one of the effects of the price reduction was that you got into the off-premise market in a way that you had not gotten in before?
 - A. In a very big way, sir.
- Q₁ And the fact of getting into the off-premise market was an assistance in getting new products accepted in St. Louis, or at least it was so thought?
 - A. That is very correct.

Hearing Examiner Hier: Now, how quick did that result or effect show up? It didn't show at all until the June reduction, right?

The Witness: That is correct.

Hearing Examiner Hier: How many months after that did that effect show up? I know the statistics are in the record, but I want your evaluation of it.

The Witness: Immediately.

Hearing Examiner Hier: Immediately?

The Witness: Because one of the things I was interested in, and I tabulated it for my own information like (984) you do on a scrap of paper, I was amazed because the first month that I could add the figures together !

think that we went to about, I think it was, 68 per cent in the off-premise market.

Mr. Barton: That is the distribution between sales. Hearing Examiner Hier: I understand.

The Witness: 68 per cent, and 32 per cent; whereas before it was in the neighborhood of 62-63 per cent on on-sales and the balance on off-sales.

That happened immediately. You could tell it within one week, actually. You didn't know percentages but you knew it had happened because the deliveries of beer, where we had delivered, perhaps, 10, 15 or 20 cases, to a Super Market, they took a trailer load. I was amazed.

Hearing Examiner Hier: That leads me to the 64,000 dollar question, then. Why did you continue it for seven months, if you got results immediately? That is what you were seeking?

The Witness: Well, first of all I don't think that anyene would say that the results of a week — I mean I was amazed at what happened, but let's consider what the other things were.

Hearing Examiner Hier: Yes.

The Witness: There was a filling-up of the pipe line. Retailers who for many, many years, had been buying, (985) say, 25 cases of Budweiser a month, suddenly found their business to the point where they were using 150. That could upset any results that you were, or conclusions that you were going to draw.

There are many consumers who, prior to the time that they were buying Budweiser, had never had it before, so when you put a case of beer in their home, that meant also that you were also sort of filling up a pipeline, so, perhaps, your initial figures were distorted.

Then, I think there is this thing to consider, that there was a natural curiosity as to whether many of these people were just taste-testing Budweiser who wanted to know whether they liked Budweiser who had never taken the opportunity or tried Budweiser before. In fact, we plugged very hard at the "here is an opportunity to taste Budweiser, sample Budweiser, at prices that are comparable to locally produced beers." Now, how many of those are going to stay with you, you don't know immediately. You have got to go on for awhile and let this thing settle down and shake itself down.

By Mr. Barton:

Q. How long then was the actual, was your product being sold at the same price in St. Louis as Falstaff?

A. From June 21, 1954 until March 1, 1955.

Hearing Examiner Hier: Did the sales price reduction (986) have any effect on your draft beer sales in St. Louis and St. Louis County?

The Witness: No, sir.

Hearing Examiner Hier: It had no effect?

The Witness: No, sir.

Hearing Examiner Hier: All right.

The Witness: All draft beers are sold at the same price over the bar.

Hearing Examiner Hier: I mean in consumption!

The Witness: No. The consumption stayed about the same.

Hearing Examiner Hier: All right, go ahead.

(Documents were marked Respondent's Exhibits 174-A and 174-B for identification.)

By Mr. Barton:

- Q. I show you RX-174-A and 174-B and ask you what it is?
- A. I have it here. This is a photostat of a postal card notice.
 - Q. By whom?
- A. By Cavanagh-Booth Sales Company. That is the Pabst Blue Ribbon Wholesaler in the city of St. Louis and it is to announce a price reduction on Pabst Blue Ribbon beer and ale. It announces that their beer will be sold at the same price as popular-priced local beers and it was effective immediately and the post card is dated June 24, 1954.
- (987) Mr. Barton: I offer 174-A and B in evidence, your Honor.

Hearing Examiner Hier: Doesn't the record already reveal this?

Mr. Barton: This is not in the record.

Hearing Examiner Hier: I know, but I mean the immediate price drop of Pabst is in the record?

Mr. Barton: It is in, through testimony, yes. There is no document in evidence on this because in the St. Louis hearings we didn't—there wasn't anybody there on the stand.

Hearing Examiner Hier: You have the same objection to this?

Mr. Barton: I will withdraw it if you concede that is the fact, Mr. Mayer.

Mr. Mayer: What is that, sir?

Mr. Barton: That Pabst reduced its price in St. Louis on or about June 24, 1954 to that of Falstaff and Budweiser.

Mr. Mayer: I concede that.

Mr. Barton: I will withdraw the Exhibit.

Would you concede also, Mr. Mayer, that Palst went up in price on March 12, announced March 12, 1955, effective—it was effective immediately, I guess.

Mr. Mayer: I have no knowledge about that, Mr. Barton.

(988) Mr. Barton: Do you want me to put it in? Mr. Mayer: Talk to the witness about it.

(The document referred to was marked Respondent's Exhibit 175 for identification.)

By Mr. Barton:

Q. I show you RX-175 and ask you what it is, Mr. Hallquist?

A. This is a bulletin announcement by the Cavanagh-Booth Sales Company, who are the Pabst Blue Ribbon Whol salers in St. Louis, dated March 12, 1955, addressed to their customers, the licensed retail outlets in St. Louis and St. Louis County and announcing that the prices for their Pabst Blue Ribbon Beer in various containers and packages would be increased effective March 28, 1955.

Mr. Barton: Is there a concession, Mr. Mayer, or shall we offer it?

Mr. Mayer: You may offer it.

Mr. Barton: I offer it.

Hearing Examiner Hier: All right.

Mr. Barton: I offer it.

Hearing Examiner Hier: Do you object?

Mr. Mayer: Yes.

Hearing Examiner Hier: Why?

Mr. Mayer: I don't see any relevancy to the Pabst -action taken by the Pabst Blue Ribbon Company, subsequent to the elimination of the price discrimination by Budweiser.

(989) Hearing Examiner Hier: Well, it seems to me it is the other half of the coin, the stipulation which replaced 174-A and B; in other words, Pabst doing the same thing Budweiser is doing in—

Mr. Mayer: That was offered in Exhibit form. That had already gone in over my objection in Exhibit form.

Hearing Examiner Hier: I am going to let it in. 173 is admitted in the record.

(The document referred to, heretofore marked for identification as Respondent's Exhibit 175 for identification, was received in evidence.)

By Mr. Barton:

Q. Mr. Hallquist, what was the effect as to the price of Schlitz in St. Louis? Let us take, first, what happened in January of 1954 with respect to Schlitz prices.

A. In January 1954, shortly after the Budweiser prices were reduced, Schlitz prices were reduced by the same amount as Budweiser.

Q. What happened with respect to the June price reduction insofar as Schlitz was concerned?

A. Nothing. Schlitz remained at the same price that they had established in January of 1954.

Hearing Examiner Hier: Off the record.

(Discussion off the record.)

Hearing Examiner Hier: On the record.

(990) By Mr. Barton:

Q. Mr. Hallquist, what is the fact as to the prices at which Pabst and Schlitz are sold in Milwankee in competition with Gettleman, who is the local brewer in Milwankee, and does business not on a national basis but on a semi-regional basis?

Mr. Mayer: I object to that. What relevancy is the Pabst and Schlitz price to a local in Milwaukee, Wisconsin as related to Budweiser's defense?

Hearing Examiner Hier: I do not see that it has any. Apparently, that was stimulated by my off-record.

And the very fact that I put it off the record was that it had no relevancy. It was a matter of information.

Mr. Barton: Do you want to know that off the record? Hearing Examiner Hier: I will sustain the objection.

(The document referred to was marked Respondent's Exhibit 176 for identification.)

By Mr. Barton:

Q. I show you RX-176, and ask you what that is!

A. This an announcement by the Griesedieck Brewing Company in St. Louis, Missouri, announcing a 6B holiday bonus special, in other words, a cut in their price below the local beer prices in St. Louis in various amounts for various quantities. Actually, the reduction is 20 cents per case in 50-case lots (991) for returnable bottles.

Hearing Examiner Hier: What date is this!

The Witness: This was in November and in December of 1954.

Mr. Barton: I offer RX-176 in evidence.

Hearing Examiner Hier: I assume you object? Mr. Mayer: Yes, sir.

Hearing Examiner Hier: Well, they have got a defense in here of meeting competition in St. Louis and St. Louis County. This is one of the competitors.

Mr. Mayer: May I inquire of Mr. Hallquist on this Exhibit?

Hearing Examiner Hier: Certainly.

Mr. Mayer: Where did you receive it, Mr. Hallquist? The Witness: I picked it up from retailers in the trade because it had been mailed to all retailers in the

City of St. Louis and St. Louis County.

Mr. Mayer: How do you know it had been mailed to all retailers? Did you contact all retailers?

The Witness: Not everyone but I had enough reports from salesmen that —

Mr. Mayer: That is your conclusion that it was?

The Witness: That is correct, yes, sir.

Mr. Mayer: We have the usual objection to this Exhibit, sir.

(992) Hearing Examiner Hier: Pardon me?

Mr. Mayer: We have the usual objection to this Exbibit, sir.

Hearing Examiner Hier: Pardon me?

Mr. Mayer: We have our usual objection to this particular Exhibit.

Hearing Examiner Hier: I think this is competent on another point and, that is, their defense of meeting competition, two (b). Whether it makes out the defense or not is another question, but I think it is admissible for that purpose.

176 is admitted to the record.

(The document which was previously marked Respondent's Exhibit 176 was received in evidence.)

(Document referred to was marked Respondent's Exhibit 177-A and 177-B for identification.)

By Mr. Barton:

Q. I show you Exhibit 177-A and 177-B and ask you what it is, Mr. Hallquist?

A. This is a letter and price schedule attached mailed to licensed retailers in St. Louis and St. Louis County by the Griesedieck Brothers Brewing Company, dated February 23, 1955, and announces a price increase which is to become effect Monday, March 7.

Q. How does the price increase, the date of it, that is, the (993) date of it, compare with that made by Anheuser Busch on Budweiser?

A. Well, Anheuser Busch announced their price increase on February 16 and was effective on March 1.

This announcement is dated February 23 and is effective March 7.

Mr. Barton: I offer 177A and B in evidence, your Honor.

Mr. Mayer: We do have the same objection to this because this is outside of the reduction of a price engaged in by Anheuser Busch. This is not relevant or material to any defense.

Hearing Examiner Hier: Technically, of course, you are correct, Mr. Mayer, but you have put into this record figures or iestimony or both showing that after the price went up again the three particular competitors involved regained a good part of the business lost. I think the

fact that one of them went up also tends to highly that regaining. I really think you would be doing yourself a disservice to keep this out of the record, both of you would.

Mr. Barton: It completes the facts. There will be certain arguments made on the facts and this would be --

Hearing Examiner Hier: 177-A and B is admitted into the record over objection which has been overruled.

(994) (The document which was heretofore marked Respondent's Exhibit 177-A and B for identification was received in evidence.)

(Document referred to was marked Respondent's Exhibit 178 for identification.)

By Mr. Barton:

Q. I slow you RX-178 and ask you what it is, Mr. Hallquist.

A. This is a compilation of Griesedieck Brothers beer sales reported by Anheuser Busch wholesalers who handled Griesedieck Brothers in their particular markets in 1954 and 1953.

Q. Yes. Now how were these figures which appear on 178 obtained?

A. They were obtained directly from the wholesaler who handles both Anheuser Busch products and Griese-deck products from the same particular warehouse.

Mr. Barton: Your Honor, I offer in evidence RX-178, and the basis for the offer, your Honor, is that it goes to the injury question. This is in further substantiation of our position that GB lost outside of St. Louis comparably to what it lost inside St. Louis during the period of the price reduction.

Hearing Examiner Hier: That is what your claim is that they lost as much outside St. Louis as inside?

Mr. Barton: That is the fact.

Hearing Examiner Hier: This, of course, is a very (995) skimpy picture. I mean, it sells over, I believe, a nine-state area, does it not; nine, ten, eleven states! I can't do much with two states here.

Mr. Barton: Your Honor, these are the only wholesalers who are joint Anheuser-Busch and Griesedied Brothers wholesalers. Now, there are facts in the record with respect to the drop of Griesedieck Brothers in 8 Louis, outside St. Louis; in other words, we have the complete picture in the record on just the total factors. Now, we put on retailers on the stand on Monda to testify to one aspect of the point. This is in furthelucidation of the point. I agree with you it is not complete, but it is as complete as we can get it.

Hearing Examiner Hier: I mean the trend shown by

these figures is already in the record.

Mr. Barton: That is true, your Honor.

Hearing Examiner Hier: Because you have overall losses. I don't see that this adds anything.

Mr. Barton: I will withdraw it, your Honor. Hearing Examiner Hier: Very well; 178 i. withdraw.

(The document heretofore mark'd Respondent's Exhibit 178 for identification was withdrawn.)

(Exhibit No. 52 was marked for identification

Bu Mr. Barton:

Q. I show you RX-52 and ask you what it is?

(996) A. This is a book containing samples of Griesedieck Brothers Brewing Company advertising from April 1, 1951 to April 1955.

Mr. Barton: Your Honor, I have the only copy here. You have a copy of it, don't you?

(Off the record discussion.)

Hearing Examiner Hier: Have you gentlemen examined this book in the last three or four days?

Mr. Mayer: I have looked at this one, among others. Mr. Barton: I offer 52 in evidence your Honor.

Hearing Examiner Hier: Let's see what is the purless of this offer?

Mr. Barton: Your Honor the purpose of this offer is to tie into all the testimony we had on Monday. In other words, it shows the changes in advertising program, it shows the particular advertising that the retailers were testifying about. It shows the change in the product which GB put out in March 1954 and the advertising program that was adopted with respect to that product and it seems to us that in order to have the record complete as a demonstration of all of the reasons, that went into what was an overall reduction of Griesedieck Brothers, we must have this as a basis for our full argument.

Hearing Examiner Hier: I do not follow you.

All right if Griesedieck advertises a lot or a (997) whom they advertise broadly or it changes its products or this, that or the other thing, I don't see that that makes a bit of difference in this case, since you have that sales figures which are the ultimate test of consumer acceptance, marketability, merchandising success and so on.

Advertising is merely one facet of merchandising.

Mr. Barton: It is one facet, your Honor, but our argument is obviously going to be, as your Honor can appreciate, that Griesedieck Brothers in this case—that there has been shown no injury by the Commission with respect to Griesedieck Brothers.

Hearing Examiner Hier: Yes.

Mr. Barton: Because the facts in the record, based partially upon the advertising, indicate that in 1954 Griesedieck Brothers came out with what they proclaimed as a new product. There is an Exhibit in the record which indicates that they withheld their old product in order to get the wholesalers to get completely stocked up with a new product. They heralded it with a number of full-page advertisements, a progressive series of advertisements, proceeding from March 1954 into August and September 1954. It was the new beer brewed the Old World way. Then they got into this Krausening advertisement later in the advertising campaign.

Now, the fact is that, or we will so argue that, unfortunately, the new product had some problems in customer (998) acceptance. The fact that it did is demonstrated by the fact that retailers in widely asserted areas outside of St. Louis, where there is no price reduction on Budweiser or any other product in competition with Griesedieck Brothers, reported that customers switched away from Griesedieck Brothers for the passons that they stated. Now, the advertising ties in tell the rest of that story, your Honor.

(999) Hearing Examiner Hier: I don't see that a does. Griesedieck advertised nationally.

Mr. Barton: No.

Hearing Examiner Hier: They put out new products—that is in the record. The results of all of those are in this record in sales figures. It does make a bit of difference whether Griesedieck's advertising was smart, stupid or how much money they spent on it, or anything else. The ultimate results of this advertising are reflected by this exhibit, are in this record now.

I don't think this is a competent exhibit. I wouldn't say it isn't competent, but I don't think that it is material in view of the state of the record.

Mr. Barton: All right.

Hearing Examiner Hier: Respondent's Exhibit 52 is rejected, Mr. Reporter.

By Mr. Barton:

Q. Mr. Hallquist, it has been alleged that Anheuser-Busch demonstrated striking economic power by advancing from approximately 12 percent of the packaged beer market in St. Louis to 40 percent of the packaged beer market as the result of the price reduction.

I ask you, assuming that fact, that allegation to be true, which of course we deny, what assurance is there that this alleged exercise of power would not occur in another (1000) part of the country at some other time?

Mr. Mayer: I think he can ask specific questions which would lead to that conclusion rather than to put the word "assurance" in the witness' mouth. He is an expert on sales.

Hearing Examiner Hier: Read the question back.

Mr. Barton: What facts are there to indicate that it would not, that the same result would not, the same thing would not be done, the same result would not occur.

Hearing Examiner Hier: You may answer that What facts, what economic facts, what commercial facts

The Witness; I think, first, that the experience of Pabst in the St. Louis market — were we to go outside of the St. Louis market, we would be operating under I would think and believe, fairly comparable conditions to which Pabst operated in St. Louis when they met the price of Budweiser and local and regional beers.

I don't think there is any reason to believe that our sales success would be any greater elsewhere than Palschisel in St. Louis. I think the good faith of Anheuser-Busch is shown by the fact, and I think that the need for any such elsewhere is pretty well eliminated or reduced by the fact that we are now marketing new packages of smaller size containers which will permit us to get into the locally priced market, that we have brought out not one but two different brands of popular (1001) priced beer, which will make it possible for us to go into the popular priced field and to get into the home market.

It certainly would not seem good business tactics to compete with Budweiser, to compete — our 12 ounce package with the 12 ounce package of a new product that we are putting out. We would be in effect competing with ourselves.

Hearing Examiner Hier: You have given me a number of subjective suggestions as of today. As you view the situation—

The Witness: Yes.

Hearing Examiner Hier: —as to why you proble would not engage in the same type of tactics, merchaldising tactics elsewhere, is there anything in the Baweiser, in the Anheuser-Busch commercial merchandisms

or productive organization which would prevent your joing so?

The Witness: Yes, sir. I would say that one of the things that we certainly—that we will always do, and that is maintain the quality of Budweiser. We don't think it we were to extend an experiment such as we conducted in St. Louis, if we said that was going to be the pattern for us elsewhere, we would have to change the quality of our product, and trankly that is why we have zone into the smaller package, so that we could perhaps give the consumer two ounces less of beer and the consumer wouldn't have to pay more than the popular price that they were always accustomed to paying.

(1002) Of course, the other answer to cutting the quality is that we brought out the two other products to set into that price field.

Hearing Examiner Hier: All right.

Mr. Barton: That is all, Your Honor.

Hearing Examiner Hier: Do you wish to have a resess before you cross-examine?

Mr. Mayer: Yes, sir, I would like to have it run a line bit longer than the ordinary recess because I have stensive notes that I would like to go over.

Hearing Examiner Hier: All right. We will make 2 15 minutes.

A recess was taken.)

Hearing Examiner Hier: On the record.

Sx Extinimation by Mr. Mamer:

Q. Mr. Hallquist, directing your attention, sir, in parletter to Respondent's Exhibit 153, sir, to page 2 of that thibit, would you give us the name, please, sir, of the depping breweries indicated in the first paragraph!

- A. Budweiser, Schlitz, Pabst, Millers and Blatz.
- Q. Now, sir, throughout this particular exhibit there are many times used the word "national" and "local" and "regional", with regard to the various beers.

First of all, would you define for me what a "national" (1003) beer is, in the terms of this exhibit!

- A. I would consider them to be the five shipping breweries which I just enumerated.
- Q. Now, sir, what would be your definition of "regional" beer?
- A. Well, I testified as to that in St. Louis and indicated that there is no standard set up for determining regional beer as compared to a local beer. I think that everyone of our wholesalers, as evidenced by Mr. Shine's testimony yesterday, have their own definition as to what is local beer and what is regional beer in their particular market.

So I don't think that I could give you a definition that was hard and fast.

Hearing Examiner Hier: Do you know any local brewery that ships more than a radius of say, 300 miles. There may be one or two but I mean in most part. Would you call them a local beer? That is my point.

Frankly, when I think of local beers, I think—there are a great many small breweries in Minnesota and in Wisconsin, that sell in their own particular community. That brewery in most instances performs all of the sales and distribution functions himself.

Then we have what I personally would term regional beers, are beers, companies of substantial volume, over more than five States, something like that.

(1004) The Witness: I think some of them, if they ship into two States, could be considered a regional beer. I think much would depend—in the definition—much would depend on the size of the brewery, the volume that i has.

Mr. Mayer:

- Q. On the tabulation of the information with regard to this particular exhibit, was the character sales of local or regional made by the person reporting to you, sir, or did you determine what was to be classified as "local" or "regional"?
- A. As I recall it, it was determined by the man who made the particular report.
- Q. Now, sir, after the price increases by the shipping breweries in October of 1953, did some of the local or regional brands raise their prices?
- A. Yes, sir. I previously testified to that, too. I don't know whether I could enumerate the areas in which they went up. I certainly could not tell you the individual breweries that went up, and those that did not zo up.
- Q. But in this Exhibit 153, there are comparisons made between the price of Budweiser and the price of some locals who did go up and some locals who did not to up, are there not?
 - A. That is correct.
- Q. And that would be true with relation to regionals, be, would it not, sir?

(1005) A. That is correct.

Q. We have no way of knowing in any area indiated in this exhibit whether or not the particular re-

gional or local involved did increase its price after the shipping breweries increased their prices in 1953, have we?

A. Yes, I think that the exhibit requests the selling prices prior to October 1953 to the retailer, and assasks for the selling prices as of April 1, 1954, and in difference between those two.

If there was a difference, it would indicate that the brewer had gone up. If there was no difference, it would then be assumed that the local or regional beer did not go up.

- Q. But we have to assume, then, I take it, from either greater variance in the differential or the lack of differential in the price to the consumer as it appears in the exhibit; is that correct?
- A. In this particular exhibit that particular phase is not tabulated but it is on the original survey forms.

Hearing Examiner Hier: Do these three regional beers in St. Louis go up?

The Witness: No, sir, they did not. Hearing Examiner Hier: They did not?

The Witness: No.

By Mr. Mayer:

- (1006) Q. With relation to the various markets contained in the exhibit, for example, Washington, D. C., that is on Page 12—does this particular cabulation refer all of the outlets, offering Budweiser for sale, which you consider to be in the Washington, D. C. market!
 - A. Yes, sir.
 - Q. It does?

- A. Yes.
- Q. That would be true, I take it then, with any particular market which appears on the exhibit!
- A. That is true. However, for example, it does not mean the city which is listed. It means the branch or wholesaler territory which is covered out of that particular point.
- Q. But on the tabulation, on Page 12, for instance, it reflects, as it states, number of on sales outlets, various price differentials to the consumer it reflects all of the outlets in Washington, D. C. served by the branch in Washington, D. C.
 - A. Yes.
 - Q. which offer Budweiser.
 - A. That is correct.

Hearing Examiner Hier: Mr. Hallquist, still looking at Page 12, under the second category, to find the number of outlets, am I correct in assuming that you add 750 plus 43, to find them?

(1007) The Witness: That is correct.

Hearing Examiner Hier: That would give the total! The Witness: Yes, sir.

By Mr. Mayer:

- Q. Does the exhibit show then on May 1st there was a decrease in the number of outlets offering Budweiser for sale in Washington?
- A. This exhibit isn't intended to do that. It may. I don't know.

The question that was tabulated is not reflected here. If by adding the two together there is a lesser amount that would indicate that, yes, sir.

- Q. Now, sir, on page 3, would you tell us, sir, what you meant by you had sensed sometime ago impending decrease in premium brand sales, and to what time period, "time ago" does it relate?
- A. That is stating it rather mildly, Mr. Mayer. We felt the decrease in sales beginning in November of 1954.
- Q. In other words, it was not impending decrease; you had actually felt a decrease?
 - A. That is right.
- Q. Was that immediately following your raise in price?
 - A. That was before that.
 - Q. Before that?
 - A. Yes, sir.
- (1008) Hearing Examiner Hier: Did the increase in price due to the strike in the fall of 1953, accelerate the decrease in premium brand sales?

The Witness: Very greatly, sir, and ours in particular.

Hearing Examiner Hier: Did it accelerate a decrease in off premise sales?

The Witness: I think it did. That is my best judgment.

Hearing Examiner Hier: Go ahead, Mr. Mayer.

By Mr. Mayer:

The Witness: Did you say off premise or on? Hearing Examiner Hier: Off premise.

The Witness: I would say that the on premise sales decreased.

Hearing Examiner Hier: But not the off premise!

The Witness: For Anheuser Busch or for the industry, sir?

Hearing Examiner Hier: Well, for both.

The Witness: For Anheuser-Busch in both on and off premise sales and for the industry, I would say the on premise phase of the business had been dropping for a long time. I think it was somewhat accelerated by the price increases of October 1953. By the same token, I think that off premise sales accelerated for the industry.

(1009) Hearing Examiner Hier: Accelerated?

The Witness: Yes, sir.

Mr. Barton: You mean the decrease was accelerated. The Witness: For the industry I think the off premise sales tended to increase after the price went up.

By Mr. Mayer:

- Q. Now, sir, directing your attention to Page 4 in the miscellaneous column of number of mentions under wholesaler recommendations, and incidentally, do you have separate indications of wholesaler recommendations, or were they on the regular reporting form? Is that where you got those recommendations?
 - A. They are on the reporting form.
- Q. How many, Mr. Hallquist, recommended a new product under "miscellaneous"?
- A. I would not tell you off-hand, sir. I would have to tabulate the answers there.
- Q. I take it you did not feel there were enough to mention them in the report?
- A. We picked out the two major mentions by our wholesalers, and these were well, three actually, con-

sumer advertising, adjustment in price, and more P.O.S. But there were other reasons that were indicated.

- Q. Frankly, weren't you a little surprised that so many of your wholesalers and field men recommended more consumer (1010) advertising and more point of sale advertising, when it came to the recommendations!
 - A. No, sir, I wouldn't be -
 - Q. In that exhibit?
- A. I don't think there is a salesman in America who does not want more of everything or every tool that will help him, and it is just typical of salesmen.
- Q. You can discount his recommendations with regard to advertising?
- A. You can, yes, sir. And they want it in their particular market.
- Q. How about their recommendations with regard to price?

A. Price?

I don't think they reflected it in here, as much of a feeling for adjustment in price as they would ordinarily do. And I think that I indicated, one of the reasons, of course, that I indicated that the company had considered it and discussed it, we didn't think that any reduction or roll back of our price to the pre-October price would be productive of results for us because our strength has always laid in the on premise outlets and we didn't think that we could get enough retailers to reduce their prices by simply rolling back our increase, and our field men have the same experience that our people in management have and I have.

And I am sure that one of the reasons they didn't (1011) recommend more of them, didn't recommend ad-

justment in price, they didn't think is would be of any help in the situation at that date.

- Q. Do you think it was because they didn't think it was of any help or because they knew that the management was opposed to that?
- A. I don't think they would know what management, how management felt at that time. We asked them for their frank opinion, their recommendations and suggestions.
- Q. The reason I was asking the question with regard to advertising and price was that to my knowledge there is only one report of one wholesaler, I may be wrong. There might be a field man, which stated that he was being sales because he thought he was not getting enough advertising.

In opposition to that, or contrasted to that, almost everyone without a single exception notes that he is having troubles in cases of decreases because of his price; yet when they come to make recommendations—

Mr. Barton: What are you referring to there, Mr. Mayer?

Mr. Mayer: I am referring to Exhibit 153. In the exhibit there are field men's reasons given for the various sales declines in his area. Only one man mentioned advertising. Every other single one mentioned price. That was the reason I thought it was a little strange that when the (1012) recommendations came in as to what to do about it, few recommended price while many recommended more advertising.

The Witness: That is correct.

Ba Mr. Mayer:

- Q. I thought that might be because they knew that recongraendations with regard to price might be futile because of the top management's regard as to what should be done in price situations.
- A. I think the fieldman, in his analysis of the situation, would say that we needed more advertising to overcome the price barrier.
- Q. But only one even lists or hints that that is the reason for his sales decline.
- A. You would have to go to the original sheet, Mr. Mayer, to get the full facts.
- Q. I qualified that, sir, by saying as it appears in the Exhibit 153.

A. That is right.

Hearing Examiner Hier: Where did this idea of competitive new brand originate, from the dealers in St. Louis?

The Witness: I would say that it originated largely through our wholesalers. Before the war Anheuser-Busch marketed a second brand of packaged beer, called Faust. We sold that in, as I recall, St. Louis, Missouri, Illinois, (1013) throughout the entire State of Texas, and I don't know what other areas were involved.

With the advent of the war and restrictions on grain, we discontinued the manufacture and sale of Faust. And our wholesalers had been most anxious for us to bring out Faust, or in effect, they were saying a popular priced beer, for a number of years.

That has been accelerated, as soon as they ran into substantial sales difficulties themselves. And I think it was just one of these things that sort of gathers momen-

tum. It came from wholesalers. It came from ome of our own people. And I mean it finally was brought into being.

Hearing Examiner Hier: Was this Faust experiment a seccess financially?

The Witness: Yes, we did a very nice business in St. Louis with Faust.

By Mr. Mayer:

- Q. Now, sir, also during the period in which the wholesaler and the fieldmen were recommending more consumer advertising, as I remember your testimony, that was also the period in which Anheuser had its largest advertising budget in history. Is that correct?
 - A. That is correct sir.

I might say there is no end to the requests of our fieldmen for advertising support.

- (1014) Q. Directing your attention, if you will, sir to page 6 of the exhibit—first of all, sir, at the top, the heading, opposite the word "Region", 25 cents for instance, it lists 10-1 and 5-1. Is that 10-1, 1953 and 5-1, 1954?
 - A. That is correct, sir.
 - Q. Why was May 1, 1954 selected, Mr. Hallquist?
- A. Well, the survey form was mailed on a late date in April of 1954. We picked 5-1 so that we would have a common date throughout the country insofar as the information contained in the tabulation or the survey was concerned.

In other words, we wanted a certain specific date, so that it would reflect conditions as of that date, rather

than have some of them report a figure that was a March or April figures.

- Q. In all instances on page 6 of Exhibit 153, in the comparison of national versus local and national versus regional, the make-up of the brands of beer to be included under the word "national" was the same, was it, sir, that is in the heading!
 - A. Page 6?
 - Q. Page 6.
 - A. My page may be yes.
- Q. In other words, what were the nationals' gain when you compared national versus local?
- A. Those, well, Budweiser, Schlitz, Pabst, Blatz and (1015) Millers.
- Q. And they were the same when you used the national comparison versus region?
 - A. That is correct, sir.
- Q. Now, sir, does this exhibit show or is it intended to show that the maximum resale price of Budweiser in Region No. 1 was 40 cents on those dates?
 - A. No, sir.
- Q. Why does it appear for Region 1 and for no other region?
- A. Because the survey form which we sent to the field requested information only in 25, 30 and 35 cent category. The field man or the people in Region 1 who conducted surveys added a 40 cent classification of their own simply to point out a condition in our market.
- Q. Now, sir, then directing your attention to the price differentials, national versus local, is this exhibit intended to show that there were no outlets in Region 1 in October of 1953 or May of 1954 in which the differ-

ential was more than 10 cents between the price of Budweiser and the various local beers to the consumer!

- A. Please restate that.
- Q. Just read it back.

(Question read by reporter.)

A. No. We didn't try to tabulate, if there was a difference (1016) in excess of ten cents. I think such outlets would have been in a minority and actually would not be relevant to our over-all problem. It is only a small portion of the market which might have a differential in excess of ten cents.

Q. In other words, by numerically adding the figures as they appear on page 6 of Respondent's Exhibit 153, in showing the differential, I am unable to tell how many outlets have differentials between Budweiser and the local beers in any region on this particular page.

Mr. Barton: I don't get that question.

Mr. Mayer: Just read it back to the witness.

(Question read by the reporter.)

Hearing Examiner Hier: I don't understand it.

Mr. Barton: The survey was not made of every wholesaler. It does not purport to be. It is only of 86 shipping points out of the total.

Hearing Examiner Hier: That isn't what he means.

Mr. Barton: I gathered that is what he meant.

Hearing Examiner Hier: Off the record.

(Discussion off the record.)

Hearing Examiner Hier: On the record.

The Witness: No, sir, it does not.

By Mr. Mayer:

Q. Now, sir, directing your attention in particular to the figures opposite "region 4" and specifically to the

column under (1017) the general heading of "national versus local" there appears the figure 85, which as I interpret the exhibit means that on the 1st of October, in 1953, there were 85 outlets of the number of outlets surveyed by Budweiser that had no differential in price between Budweiser and the local brand.

- A. That is correct.
- Q. Would a tabulation of the information given to you by your wholesalers or field men tell us the name and the individual local brand in those 85 instances?
 - A. No, it would not.
- Q. Would it be possible, for instance, that the wholesaler or in this case it is your branch operation, might report that Gunther is a local beer in Washington, D. C.?
 - A. It is possible.
- Q. So it is possible that what appears in your local column might appear in your regional column on occasions?
 - A. That is correct.
- Q. Now, sir, would those replies or those reports tell us in any sense what type of outlet was involved in reselling Budweiser and the local brand at the same price to the consumer?
 - A. Simply that it was an on sale outlet.
- Q. But it would not tell us whether it was, well, for example, whether it was Metropolitan Club or Pauls Cafe?
 - A. No, sir.
 - (1018) Q. Now, sir, directing your attention to Page 8 of Respondent's Exhibit 153, again, as I understand it, in the comparison between the national and the locals, this was not designed to and does not tell us if there

were any locations in which the differential was more than ten cents?

- A. That is correct.
- Q. Now, sir, is there any explanation for the fact that the figures appear to be the same in many instances on this exhibit in the non differential column of national versus local and national and regional, for instance, in the Albany area, figures in all four columns are identical? Do you know the name of the local beer purported to be sold there at the same price?
 - A. No. I don't.
- Q. Do you know the name of the regional beer there purported to be sold at the same price?
 - A. No, sir, I do not.
- Q. Does this exhibit indicate that in Albany, New York, that in 290 instances the local beer and the regional beers are being sold for the same price?
 - A. That is correct.
 - Q. And why is that?
 - A. Well, wait, now -
 - Q. I am sorry.
 - A. You said you mean over the bar?
 - (1019) Q. Yes, sir.
 - A. Or to the retailer?
 - Q. No, to the consumer.
- A. It indicates that the price to the consumer is the same, yes, sir.
 - Q. And do you have any explanation of that, sir?
 - A. No, sir, I don't.
 - Q. Did you make any attempt to find out?
 - A. You mean about a specific city?

- Q. Yes, sir.
- A. As to why the retailer sold his local beer and regional beers at the same price as he sold his national brand.
 - Q. Yes, sir.
 - A. No, sir. I had been very happy to leave it alone.
- Q. Again with this item by totaling it numerically, the differentials, I am unable to come to a figure which would actually represent the number of outlets in which there is a price differential to the consumer between Budweiser and the local beer.

Hearing Examiner-Hier: That was a question.

The Witness: Was it a question?

Hearing Examiner Hier: Yes. The answer is obviously yes. It is the same thing asked you on the other.

Any differential in addition to ten cents is not on this exhibit,

(1020) The Witness: Yes, sir. I mean frankly, I would say we were not interested because we are interested in the bulk of the market, the mass of the market. I don't think if there are differentials exceeding a dime that it would not be over two or three percent of the entire market.

By Mr. Mayer:

- Q. I take it, though, two or three percent of a market could be important to you, could it not?
- A. I am talking about the number of licensed outlets. And where you might expect such a differential, it might be in a nightclub or some other place where beer sales are, let's say, a minor part of our business.

- Q. Is it possible, Mr. Hallquist, directing your attention to Page 12, and more particularly to the information with regard to Baltimore, Maryland, in which on October 1st,—I am choosing this material because it is a small figure and you might be familiar with it—to tell us what particular types of outlets are involved in that figure, Number 10?
 - A. Simply on sale outlets.
- Q. And the reports from your fieldmen or wholesalers would not indicate what particular types?
 - A. No. sir.
- Q. And I take it from the information which you received and put into this tabulation that there are no regional beers being offered in Washington, D. C.?
- (1021) A. There were none so indicated by the person preparing the survey form; in other words, he considered the beers that are being sold in Baltimore as being local brands.
- Q. I may have asked this before, but in the reporting by your wholesalers or field men, did they identify the local brands by name or the regional brands by name?
- A. In the section from which this information was tabulated, no, sir.
 - Q. They did not?
 - A. No.
- Q. Now, sir, did you make any particular analysis of the number of accounts appearing on this complete exhibit with regard to the volume, the sales volume, of Budweiser as against the sales volume of the local beer?
 - A. No. sir.
- Q. Would not that have told you how you were doing when the price was the same to the consumer in the normal average outlet?

- A. We have and I believe it is in the exhibit here, the amount of sales decrease that we were suffering in each one of these particular markets during the January and February period of 1954 compared to January and February of 1953.
 - Q. Yes, sir.
- A. And there is a correlation between the pricing structure and the sales decrease.
- (1022) Q. Isn't that based on your fieldmen's and wholesalers' statement that it was because of price?
 - A. No, sir, I think the facts show it.
- Q. No, but also every one of their comments state that their sales are decreasing because of the price problems?
 - A. That is right.
- Q. I wanted to know, did you make any analysis of the markets in which you have outlets selling Budweiser at the same price as a local beer, to determine what your volume was in that outlet as compared to the local beer volume?
 - A. Where we are selling at the same price?
 - Q. Yes, sir.
 - A. No, sir.
 - Q. Would that have given you any indication as to your volume that you could expect when the price was the same as the local beer?
 - A. No, sir. I don't think, I don't think that it would.
 - Q. In effect, what more did you do in St. Louis during the price period charged, when the price was the same as the local, what was the difference in that situation than the situation in Greensboro, North Carolina when you had 429 outlets selling Budweiser to the con-

sumer at the same price as the local beer was being sold to the consumer?

A. I am trying to understand your question.

Mr. Mayer: Read it back.

(1023) The Witness: What specifically—what is your question?

Mr. Mayer: Would you read it back?

(Question read by reporter.)

Hearing Examiner Hier: His point—never mind reading it back—is that you had a test in Greensboro, North Carolina, a competitive test, selling your beer at the same price to the consumer as to the local and regional beers were being sold at, and why engaged in another test in St. Louis with the results that you depict in this record. I mean, that is your ultimate question. That is what he is driving at.

The Witness: Frankly, I don't know just how to answer that question, Mr. Hier. There are a lot of factors that would not let you take a market like Greensboro, North Carolina as a comparison with St. Louis.

For example, I don't think that all brands of beer sold at the same price in Greensboro, North Carolina, to the retailer, that there was a price differential there. That conditions, and I can speak more freely when we move up into the middle western part of the country, in parts of Iowa, in Kansas—there is one price over the bar. There may be a differential of as high as 75 cents between the price of one brand and another brand in selling price to the retailer, yet it is a common practice and policy among the retailers in (1024) an area to sell all beers for one price.

That certainly would not give us a test of the condition that we were looking at in St. Louis. There is no indication that Greensboro, North Carolina, through the retail outlets sell for both on and off premise consumption at the same price. The bar market is an entirely different market.

In the areas that I talked about, in Iowa, you will find all beers selling for the same price over the bar despite the fact that there is a difference in cost from 75 cents to perhaps 80, or it might be 60 cents. Yet the take home packages sell, oh, let's say, percentage mark up basis above cost through grocery stores—your price would be in relation to the cost price whereas in the tayern it is not always true.

Hearing Examiner Hier: There is one other difference that occurs to me, that is the volume potential; of course, around Greensboro, North Carolina is far different from what it is in St. Louis.

The Witness: I think a great difference in the legal situation.

Hearing Examiner Hier: I wanted to ask you if the volume potential had anything to do with it.

The Witness: Seriously, we would have to have an area that had potential as compared to an isolated one. I (1025) certainly would not want to take the results of an experiment in a rural market of Iowa or Kansas or North Carolina in formulating any overall plans for the company.

By Mr. Mayer:

Q. Mr. Hallquist, I believe in answer to the Examiner's question, you stated that in certain areas it is customary to sell all beers at the same price to the consumer.

- A. Over the bar.
- Q. Yes.

Would you tell us those areas?

- A. I will do the best I can from my memory. But I think that you will find some of them in, definitely, Iowa. I am not talking about all outlets.
 - Q. Generally.
- A. A substantial number of outlets, Chicago, Illinois. You will find it pretty well scattered as Mr. Shine read his survey reports yesterday. I think there were quite a bit in parts of Minnesota, probably in North Dakota, South Dakota, certain western parts of Texas. I think you would find it pretty well scattered. I think the same information would be available from the 1959 pricing survey that Mr. Shine has.
- Q. How about this one, sir? Would you say that the areas in which you have depicted here that there is no differential, that those are areas which are customarily areas in which no differential is maintained between Budsweiser and the local (1026) price beer?
- A. It ranges all over the scale that we have there. There are some places where there is a number of outlet-selling with no differential to the consumer over the bar. There are outlets, there are areas, towns or purkets listed where there are considerable number of outlets where there is a five cent differential.

There are other areas where we have been able to demonstrate to ourselves that the differential had increased from five to ten cents as a result of the price action in October 1953.

Q. As I understood it, Mr. Hallquist, in answer to the Examiner's question, you said there are several areas

in the country in which it is customary for the people to pay the same price for all beers.

- A. Over the bar.
- Q. Over the bar?
- A. Yes.
- Q. There are several areas that show up on this exhibit,
 - A. That is correct.
- Q.—that that is a fact, and I wanted to know if those are the areas you had in mind when you said, areas which customarily price all beers the same to all consumers over the bar?
 - A. I don't know whether they are in there or not.

(1027) Q. This is your survey?

- A. Yes, sir. This was made a year and a half ago, too.
- Q. You didn't familiarize yourself with the price to come here to testify?
 - A. No, sir. No, sir, I did not.
- Q. Now, Mr. Hallquist, isn't it a fact that as in the similar areas in which the price to the consumer is the same, that there are certain types of outlets in which the price of all beers is the same to the consumer?
 - A. I couldn't say there was.
- Q. Is the price to the consumer the same just, for example, well, the beer prices at the ball park in St. Louis, Missouri?
- A. At the ball park, yes, at the ball park, St. Louis, all beer prices are the same.
 - Q. Do you belong to a country club, sir?
 - A. No, sir.

Q. Have you had any occasion to become familiar with the prices obtained by Budweiser as well as its local competitors in country club outlets?

A. I have. I have also been in hotels, restaurants,

various kind of outlets. I have been.

Q. Would you say in none of those kinds of outlets have you seen any that customarily price the beer the same to the consumer regardless of the brand of beer?

A. I don't think you can generalize on that, because there (1028) are some that might have no differential. There may be some that have a differential of five cents.

I think in St. Louis, the hotels traditionally have a five cent differential. I am quite sure that is true in many other metropolitan markets where the hotels would have a five cent differential.

Q. How about country clubs?

A. I am not a member of a country club and I don't think I am qualified to answer that one.

Q. Aren't you familiar with the consumer prices of the country clubs in your area when you were regional manager of the St. Louis area?

A. The country club represents a very insignificant

part of the total beer volume.

Q. My question was not about volume; it was what

is the price.

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A. I don't attempt to find out because I am interested in the part of the market from which the bulk of the sales can be obtained.

Hearing Examiner Hier: May I interrupt, Mr. Mayer?

Mr. Mayer: Yes.

Hearing Examiner Hier: You mentioned Chicago, Mr. Hallquist.

The Witness: Yes.

Hearing Examiner Hier: As being a market in which (1029) beers traditionally sell—perhaps not traditionally—but do sell over the bar at approximately the same price.

On Page 21 of Respondent's Exhibit 153, I note therein that on October 1, 1953, there were 403 outlets, selling at no price differential as between national and regional, only 30 with a five cent differential and but five with a ten cent differential.

The Witness: Did you say Page 21?

Hearing Examiner Hier: That is the page-I think I have here.

The Witness: I have got the wrong page number.

Hearing Examiner Hier: Region No. 5. Perhaps it is Page 11. No. 21 is the page.

Mr. Barton: It is 23, I think, in ours. Somebody paged wrong.

Hearing Examiner Hier: West-North Central Region, Region No. 5.

Now, the record contains it. Will you refresh my recollection as to the number of outlets there are in St. Louis County?

The Witness: St. Louis and St. Louis County, there is a total of about 4,500 outlets.

Hearing Examiner Hier: 4,500?

The Witness: Yes. This isn't the City of Chicago.

Hearing Examiner Hier: It is not?

(1030) The Witness: No. We have a wholesaler who has a little wedge of the Chicago market. I mean

as you can see there, this would not begin to cover the number of outlets there are in the City of Chicago.

Hearing Examiner Hier: Where is Chicago in here? The Witness: It is not one of the points that we asked for information on at the time of this survey. You might be able—well, I was wondering about Philadelphia. That is one in which I think there were a fair number that had no differential between regionals and national brands.

Hearing Examiner Hier: Is Philadelphia comparable to St. Louis in the number of outlets, the amount of regional and local beer competition that you have there, as well as in population — Philadelphia is much larger.

The Witness: I think Philadelphia is probably a little tougher market than St. Louis. For Anheuser-Busch, from the standpoint that one thing that is always in our favor in St. Louis is that it is our home market. We have been there 103 years.

Hearing Examiner Hier: I want to ask you a question on another point.

You answered me this morning that this decision to lower prices in St. Louis on two different occasions was made finally by Mr. Busch. Are you in a position to assure me that you were present at enough of those discussions to know the (1031) reasons behind why he made this decision?

The Witness: Yes, sir. I made the recommendation for the first cut. I am sure that the reasons that I have outlined for proceeding in St. Louis to get more business and the reasons for wanting more business, I think that those were the reasons that Mr. Busch went along with my recommendations, because originally he had offered

to give me additional sales manpower. I didn't think that would do the job that we wanted to do.

Hearing Examiner Hier: Come back at 1:10 o'clock. (Whereupon at 12:10 o'clock p.m., a recess was taken until 1:10 p.m., this day.)

(1032) AFTERNOON SESSION

1:10 p.m.

Hearing Examiner Hier: All right

JOHN R. HALLQUIST, JR., resumed the stand and testified further as follows:

Cross Examination—resumed by Mr. Mayer:

- Q. Directing your attentior, Mr. Hallquist, to the tabulation concerning Region No. 5, headed West North Central Region, William Bien, which discloses the sales outlets by selling price to consumer as well as the various price differentials to the consumer, in the tabulation and the comparison of the Budweiser price to the local price, would you name the local beers involved in that price comparison!
 - A. In one specific city?
 - Q. In Milwaukee, Wisconsin, I am sorry, sir.
 - A. I couldn't do it, Mr. Mayer.
 - Q. Would the report show that?
- A. It would show which brands were considered local brands; yes, sir.
- Q. Frankly, the reason for the question was that the identical figures appear under the regional brand, and what would that indicate to you, sir?

A. I couldn't draw a conclusion without looking at the (1033) report itself, and then I don't know whether I could tie the brands that are listed as local and regional into this tabulation.

Q. Why not, Mr. Hallquist?

A. Well, in tabulating this information or setting it forth on the survey form itself, there are no brands listed. However, in the price request portion of the form there is located the national brands and the local and regional brands.

Q. I am not quite sure, Mr. Hallquist, that I have that answer straight in my mind. Does the report show when, a the tabulation shows, there is no differential between Budweiser and a local brand or some local brands, would the report identify those brands individually?

A. It would identify the brands that the wholesaler considered to be local or regional brands in the section where we asked him for the price to retailers for national, local and regional brands. That is where the local and regional designation would occur.

Q. Shall we take a look, sir, at the report from Milwaukee, Wisconsin?

A. Sure.

Q. Would you mind, sir, taking the report, the physical report —

Mr. Barton: So the record will be clear, Mr. Mayer, let the record show that the witness has taken out the (1034) original report, which is a duplicate of RX-12, and is now examining it; that it is a completed RX-12.

By Mr. Mayer:

- Q. Now, sir, would you tell us what brands on that particular report the wholesaler has listed, first, as national, then the brands listed as regional, and then the brands listed as local.
- A. Listed as local brands are Miller, Gettelman, Burgemeister; and listed as regional brands are Weber and Fox Head.
- Q. Does he have the national brands that he considers to be national listed, sir?
- A. Yes, sir. He has Budweiser, Schlitz, Pabst, and Blatz. They are printed on the form, and he had added Miller here under the local designation. I don't know whether he means local or national.
- Q. In your makeup of the tabulation, which one of the local beers or were all of them sold at those 351 outlets on October 1, 1953, at the same price as Budweiser?
- A. There is a notation here that the locals include Gettelman and Burgemeister.
- Q. But does this exhibit mean that all three locals were sold at the same price as Budweiser?
- A. You mean over the bar? I mean, are you talking consumer price?
 - (1035) Q. This is price to the consumer; yes, sir.
- A. According to this form here it says that there is a—there is no difference in 351 outlets in October 1 of 1953; on May 1, 1954, there was no differential in 364 outlets. It also says that there is a five-cent differential on October 1 in 767 outlets; on May 1 there were 767 outlets in which there was a five-cent differential.

- Q. Mr. Hallquist, maybe I was not too clear. From the way I understand this exhibit with regard to Milwaukee, Wisconsin, there are approximately 1125 outlets in which there is competition between Budweiser and a local beer.
 - A. That is correct, or a regional beer.
- Q. Or a regional. I was concentrating more on the figures for a local.
 - A. Yes.
- Q. Now, in the 351 outlets in which the price is the same, can you identify the local beer which is priced the same or are all local beers priced the same?
- A. There is a notation here that the locals include Miller, Gettelman, and Burgemeister.
 - Q. All right, sir.

Now, according to that report, let me just ask a hypothetical question, if this would be possible, for instance: that in the outlets in which there is no price differential, that the competition in those outlets, is Miller's and (1036) Budweiser—in the outlets in which there is a five-cent and ten-cent differential, the competition may be between Budweiser and Gettelman, or Burgemeister?

- A. Mr. Mayer, I couldn't draw a conclusion on that.
- Q. I mean this chart does not reflect that.
- A. That is correct.
- Q. And it is possible then in this report that this did happen?
- A. It is possible, I would say. I think that the only way you could determine that is by going back to the original records from which this information was taken.
- Q. You can see that is one of my problems. I don't have the witness on the stand, you see. The man testi-

fying today is actually the wholesaler, and I am trying to find from you as much as you know about what he reported to you.

- A. Yes.
- Q. And you do not know, as I understand it then, in the 351 outlets whether all three locals were sold at the same price as Budweiser, whether one local was sold at the same price as Budweiser, or whether two locals were sold?
 - A. No. sir. There is no way of determining that.
 - Q. From this exhibit?
 - A. That is right.
- Q. Nor from the basic information from which this exhibit is drawn?
- (1037) A. If you are talking about the sales analysis form, you are correct.
- Q. That is the only form of the information, isn't it, from which this exhibit came?
 - A. That is the only one we have here, yes.
- Q. Not that "we have," this exhibit was drawn from this information and this information only, was it not, sir?
 - A. That is right.
 - Q. All right, sir; and it is all here?
- A. All the forms that were used to tabulate this are here.
- Q. The information appearing on this exhibit is drawn solely and completely from this information which you have supplied us?
 - A. That is correct.
 - Q. All right, sir.

Now, sir, directing your attention to Los Angeles, California, on Region 8, headed Mountain and Pacific Region, John Flanigan, again it is the portion of the exhibit which indicates the various price differentials to the consumer.

A. Yes.

Q. Looking particularly at Los Angeles, California, sir, what area does the branch at Los Angeles serve, sir?

A. Roughly the City of Los Angeles.

Q. Is it limited to generally the metropolitan area of Los Angeles?

(1038) A. I would say to even the corporate limits

of Los Angeles.

Q. Now, sir, would you again go to the basic records for us, sir, and get the basic information with regard to Los Angeles, California.

Now, sir, would you tell us, if you will, sir, the beers that were considered to be local as contained in that

report.

A. Lucky Lager, Acme, and East Side.

Q. Now, sir, as I understand it, that exhibit shows

no regional beers being sold in Los Angeles?

A. That is correct. They were - well, the tabulation here does not show a regional brand because a regional brand was listed with the national brand.

Mr. Barton: As a matter of fact, it says "No distinction between regional and national."

The Witness: That is right.

Mr. Barton: In other words, the other two regionals, the regionals there are Coors -

By Mr. Mayer:

Q. In other words, your wholesaler considers Coors to be a nationally sold brand?

A. No, sir. For the purpose — Coors is listed here as a regional brand. However, in developing the information for the number of outlets with price differentials, he notes that there is no distinction between regional and national brands (1039) because they sell at the same price as national brands.

Mr. Barton: Mr. Mayer, the tabulation simply failed to include that there was no differential between Budweiser and national brands and Coors.

Mr. Mayer: Or any other regional that he classifies as regional?

The Witness: Yes.

Mr. Barton: According to the form it say "No distinction between national and regionals," and apparently the tabulation, it just wasn't carried over because there were not any more numbers in there.

By Mr. Mayer:

- Q. Does this mean, sir, that there were only two outlets in Los Angeles, California, in which there was a price—in which the price was the same for the local beer as the national and regional beer?
 - A. At the time of the report; yes, sir.
- Q. Now, sir, would you get the report for me, please, sir, of Sacramento, California.

Now, sir, would you name for us, if you will, the brands sold in that area which were classified as local.

A. Lucky Lager, Burgemeister, Regal Pale.

- Q. Now, sir, will you tell us the brands that were considered to be regional?
 - A. Rainier and Olympia.
- (1040) Q. Does that wholesaler classify Coors as a national?
 - A. He has not listed Coors.
- Q. It is not sold then in Sacramento, is that correct, sir?
- A. Frankly, I do not know, sir. We didn't provide information nor did we request information as to all of the brands that are being sold on the market. He listed at his option the brands he wanted to put in.
- Q. Mr. Hallquist, directing your attention to the special sales analysis for Cleveland, Ohio
 - A. Yes, sir.
- Q. (continuing) would you tell us, sir, again the method of selection that you used in taking the two reports from Cleveland, Ohio, and North Carolina out of all the reports that were submitted to you.
 - A. For purposes of inclusion with this tabulation?
 - Q. Yes.
- A. Simply because, for example, Cleveland, Ohio, is a major market. I don't think there was any specific reason for choosing it over any of the rest of them. I can say this: In the Cleveland tabulation here the shift in pricing is most pronounced, and I think that is one of the reasons that it might have been included, which it shows dramatically that quite a number of the outlets have moved from a five-cent differential to a ten-cent differential, and that the differential on six-can packs to consumers had widened considerably, (1041) in other words, from 19 to 31 cents.

- Q. Was there any particular reason, sir, for the selection of the report of Durham, North Carolina?
- A. I would say that one of the important factors—page 49—are the price increases of the various national brands and the fact that the regional brands listed in one case there was no change in its price to the retailer, and in the other case Ruppert had a five-cent decrease to the retailer.
- Q. Now, sir, are these two reports representative of all the reports submitted?
- A. I would say they are, except that I am not too sure what you mean by "representative." They are the same type of reports; they contained information gathered in the same way. Now the results from one report to another would differ, true; but I think they generally portray the situation that we were outlining in the summary here.
- Q. Would you point out to me specifically on the Durham, North Carolina, report from the Ace Distributing Company, I take it, how we can come to any determination as to what he thinks national brands are or local brands or regional brands by name?
- A. Well, he has listed Red Top and Ruppert as regional brands.
- Q. And those, I take it then, are the only two regional brands in that area?
 - A. That he chose to list.
- (1042) Q. If he wanted to, Mr. Hallquist, could he have chosen to report none?
- A. I believe the form would have been returned to him because it would not have been complete.

- Q. What check did you make on this particular report to find out if those were the only two regional beers in that market?
- A. We weren't interested in finding out or having all of the brand names listed. If we had been, we would have provided more information. As long as we got a sample of the local beers that were considered local by the wholesaler, and a sample of the regional beers as considered by the wholesaler, we were satisfied that we had a true picture of the general market condition, and we had information on those specific brands.

I think one of the important points in the Durham, North Carolina, report is that there was a shift from a 25-cent market in so far as Budweiser was concerned, to a 30-cent market. That is on page 48 or Section 1, page 3 of the Durham report.

- Q. Of course, the information on that exhibit, I take it, is, in the top box at least is, only for Budweiser; is that correct?
- A. That is only for Budweiser, and that is the thing I was pointing out, that pre-October, 1953, 475 outlets sold Budweiser at a quarter, and 33 sold Budweiser at 30 cents.
- (1043) At the time of the survey report form date there were only 54 outlets left of the 475 that were selling Budweiser at 25 cents, and the balance or 441 had gone up to 30 cents.
- Q. Mr. Hallquist, I believe on direct examination in your testimony this morning you introduced several maps detailing where you were unable to sell your product in the various sizes as indicated on the exhibit.
 - A. Yes, sir.

Q. Have you had any occasion to or ever made a study to indicate the areas in which, particularly with regard to the areas in which, by law, you are unable to offer Budweiser in these particular sizes? Have you ever made any study to indicate what proportion of your volume of sales, therefor, is in areas in which you cannot arrest any decline in sales by introducing the particular packages indicated on this map?

A. Mr. Mayer, probably such a study has been made. I don't have it available to me, in fact, I don't know of such a study, whether we specifically said we couldn't get or what part of our volume these states would represent. However, I don't think that that would be a factor.

Q. Well, obviously in the states in selecting a solution to your economic problems, you knew in advance, being aware of the regulations of the various states under competent legal counsel, I am sure, that you couldn't get into certain states (1044) with certain types of packages.

A. That might be true of some, but there are other ones in which you would have no idea until you presented the packages to the state ABC Commission. They were in a position to pass regulations or to promulgate regulations which would permit that package, and that couldn't be done antil you had gotten the package ready to market.

Q. Do you know -

A. There were other states where I do happen to know that legislation was pending which would change the law. In South Dakota you cannot sell a 7-ounce bottle. I know that legislation had been considered and was

before the legislature there to permit the selling of containers under 12 ounces.

- Q. But that would be one state that, at the time you were searching for answers to your problems, you knew it was against the law to market?
 - A. That is correct, sir.
- Q. How many other of these states did you know at that time had regulations prohibiting distribution of your product in these size containers?
 - A. Regulations or laws?
 - Q. Laws.
- A. In fact, I could not answer that question because I would have to go back to some documents that we had previously. I don't know whether we have gotten a list of those kinds of—
- (1045) Mr. Barton: Mr. Mayer, we will agree to submit for the record a recapitulation of the legal situation in each of the states, if you want it. There has been a study made of that. We didn't—it is so many pages thick, and we didn't undertake to put it in the record. But if you would like to have it and put it in the record, we would be very happy to furnish it.

Mr. Mayer: I am not happy to have a thesis of legal conclusions.

Mr. Barton: The laws in this field are rather complicated, and it cannot be compressed into a one-page document.

Mr. Mayer: I hate to argue, but it has been compressed into one page right here. There it is. I don't know why it could not be compressed into one page in a field earlier than this. This is a one-page document.

This is joint states in which 10-ounce containers cannot be marketed.

Mr. Barton: As of that date. Mr. Mayer: March 31, 1955.

The Witness: Whether they were by law or by -

Mr. Mayer: Either one.

The Witness: Or by regulation?
Mr. Mayer: This is either way.

The Witness: That could be changed; I don't know.

Mr. Mayer: That is all right, sir. I don't think we can depend on that. I think we can take the volume of sales of (1046) Budweiser as of March 31, 1955, and at least get some figures as to their distribution, which could not be affected as of that date by a difference in package size.

By Mr. Mayer:

- Q. Mr. Hallquist, do you have a copy of Respondent's Exhibit 176 there in your possession?
 - A. Yes, sir.
- Q. Incidentally, Mr. Hallquist, would you know before getting into this, whether or not Texas prohibits this size, 10-ounce size, container by law?
- A. Yes, sir. I think I previously testified that that is one of the markets that we couldn't get into with the new package that we were considering, and which, I would say, lent a lot of weight to our decision to market a new product.
- Q. Now, sir, I wonder if you would tell me, sir, from your own personal knowledge, how much G.B. was sold at the \$2.15 case price for returnable 12-ounce bottles in St. Louis from November 15 through Friday, December 311

- A. I haven't the slightest idea, Mr. Mayer.
- Q. Do you know if a case was sold at that price?
- A. No, sir; I do not.
- Q. This is a price announcement, is it not, sir?
- A. That is correct.
- Q. Was it effective completely through Friday, December 31?
 - A. In so far as I know, it was.
- (1047) Q. You have no indication that it was with-
- A. No. I would—I could assume that it was not withdrawn because retailers who traditionally price beer for off-premise consumption in St. Louis were selling Griesedieck Brothers at a lower price during that period than they were other brands manufactured in St. Louis.
- Q. And you have figures with you, I take it, to substantiate that?
 - A. No, sir; I don't have.

Mr. Mayer: Mr. Examiner, we have some more questions of Mr. Hallquist, but I request about a five or ten-minute recess to go through my notes a little more thoroughly before finishing.

Hearing Examiner Hier: Do you have any further

witnesses?

Mr. Barton: No.

(1048) Hearing Examiner Hier: I think this record should have a more accurate description in it, not technically but commercially, of this so-called Krausend process. I, perhaps, should have brought this up when the chemist was on the stand, and I think we can, perhaps, get it in through a series of questions of Mr. Hallquist.

Am I right, Mr. Hallquist, in assuming that up until G.B. started that process, Anheuser-Busch was the only brewer in the country of any appreciable size which used it; is that correct?

The Witness: Mr. Hier, I don't know.

Hearing Examiner Hier: You do not know.

Now, the Krausend process is a much more expensive way to make beer because of the longer time it takes for the second fermentation, is it not?

The 'Witness: That is correct.

Hearing Examiner Hier: There is involved in it the use of, the longer use of, equipment, some extra material costs, but the main item is the labor and the time of aging; isn't that true?

The Witness: As a layman, I would say, yes; I am not a brewer.

Hearing Examiner Hier: Do you know when G. B. introduced that?

The Witness: I think their advertising indicated that (1049) it was in March or April of 1954.

Hearing Examiner Hier: Do you have any explanation or judgment as to why a brewery whose sales were on the down-trend would switch to a much more expensive process of making beer?

The Witness: I would assume to make a product that had better taste qualities than the one that they were previously making or taste qualities that would be acceptable to more people.

Hearing Examiner Hier: To correct the downward trend —

The Witness: Yes, sir.

Hearing Examiner Hier: (continuing) - perhaps.

Do you know whether they went up in price as a result of adopting a more expensive production method?

Mr. Barton: Your Honor, there is some question about whether their — I do not think there is anything in the record about krausending, the krausending process itself —

Hearing Examiner Hier: I don't believe it is.

Mr. Barton: (continuing) making the process more expensive, and I am not certain that that is the fact.

Hearing Examiner Hier: I am not either.

Mr. Barton: This line of questioning is based upon the premise that krausending is in itself a more expensive process.

(1050) Hearing Examiner Hier: That is right.

Mr. Barton: I am not testifying, but there is some question of whether krausending is not a term like brewing; in other words, it is a generic term. But I would suggest that during the recess we have an opportunity to discuss this problem and, perhaps, we can stipulate on the record what the fact is as to that.

Hearing Examiner Hier: You want ten minutes, you say?

Mr. Mayer: Yes, sir.

(Short recess.)

Mr. Barton: Your Honor, I would like to state on the record that it is our understanding that krausending is a generic term like brewing. It is a description of a process that can be done in a number of different ways, and there is no standard or single way in which it can be done, and that we do not know what change in the cost of the making of G.B. Beer was caused by the adoption of the krausending process as advertised by them;

i.e., whether it reduced their cost, raised it or it remained the same.

Hearing Examiner Hier: In your own brewery it is more expensive, is it not?

Mr. Barton: There is a big question as to whether the krausending process as such is the element which makes the brewing of Budweiser more expensive. Of course, there is the (1051) fact that there are—the choicest hops are used; there are other materials which are used in Budweiser which are not used in some other beers, which make that beer the more expensive. In other words, it is not, as I understand it, the krausending alone which contributes to the cost factor, and you can't say that krausending in and of itself is necessarily a concomitant with a high cost or a higher cost item.

Hearing Examiner Hier: Go on, Mr. Mayer.

By Mr. Mayer:

- Q. Mr. Hallquist, are you familiar with the activities of Anheuser-Busch in the State of Texas and the general competitive situation existing there in 1953 generally, as they were testified to by Mr. Shine?
 - A. Not from personal observation; no, sir.
- Q. What was your position, Mr. Hallquist, with the company during 1953?
- A. I was Sales Manager of the Midwest Region. That, as I explained before, comprised was comprised of Missouri, Kansas, Nebraska, Iowa, North and South Dakota, and Minnesota.
- Q. Were you aware of the situation existing in Texas in 1953?
 - A. In the general conditions, I would say that I was.

- Q. Were you asked for any comments or any recommendations as to what Anheuser-Busch would do or what steps should be taken in the Texas market?
 - A. No, sir; I was not.
- (1052) Q. I think you testified, Mr. Hallquist, that you recommended to the management the price reduction of Budweiser in St. Louis and St. Louis County?
 - A. That is correct.
- Q. And at the time you made that recommendation what was your area of authority within the company?
- A. At that time I was Sales Manager of the Midwest Region.
- Q. And approximately how many states, sir, did the Midwest Region include?
 - A. Seven states.
 - Q. Seven states.

Were recommendations made by the other regional managers to the management concerning what steps Budweiser should take in their particular regions at the same time?

- A. Not you mean the same time that I made my recommendation?
 - Q. Yes.
 - A. No, sir.
- Q. Did they periodically make recommendations to the sales management or to your top management concerning what should be done concerning the — or do they make any recommendations?
 - A. I am sure they did.
 - Q. They did, sir?
 - A. I am sure they did.
 - Q. Do you know what they were?

A. No, sir; I don't.

(1053) Q. Now, in recommending the price reduction in St. Louis and St. Louis County, did you recommend a price reduction in any other area?

A. No, sir; I did not.

Q. You did not?

Hearing Examiner Hier: Did anybody else?

The Witness: Mr. Hier, I don't know at that time. I know that there were recommendations at a later date, but at that specific time I know of none.

By Mr. Mayer:

Q. Do you know if there were recommendations made, speaking now with relation to the Texas situation, as to a reduction in price in Texas?

A. No. I had heard it discussed, but I don't know whether anyone made a formal recommendation.

Q. Did the top management ever consider it?

A. Apparently they have. I know that, as has been stated, we tried everything in Texas but a price reduction and, as a matter of fact, in the early part of this year we did make a slight reduction in the State of Texas.

Q. Now, Mr. Hallquist, were you present for the testimony as it was given by the various retailers that were called in this matter this week?

A. Yes, sir.

Q. Did you talk to those gentlemen before they were called (1054) to the witness stand?

A. Yes, sir; I talked to all of them at, I would say, their place of business.

Q. Would it be your conclusion that the G.B. losses incurred by the company outside the St. Louis and St. Louis County area were because of product trop de?

A. Well, from the testimony of the witnesses, I would say that there were probably several things that contributed to their sales losses outside of St. Louis as well as in St. Louis.

Q. And that product trouble was, therefore, one of the causes of the loss?

A. A very definite one; yes, sir.

Mr. Mayer: That is all we have, sir.

Hearing Examiner Hier: Do you have any redirect?

Mr. Barton: No, I have no redirect, Your Honor.

Hearing Examiner Hier: I guess that is the end for you, yes.

The Witness: Thank you, sir.

Hearing Examiner Hier: Thank you, sir.

(Witness excused.)

Mr. Barton: Your Honor, the defendant rests its case. Hearing Examiner Hier: You mean the respondent rests, Mr. Barton.

Mr. Barton: I am sorry; the respondent rests. May (1055) the record be corrected.

Hearing Examiner Hier: Yes.

Mr. Mayer: Mr. Examiner, as you know, during this week we have had a good bit of statistical information introduced into the record and a considerable number of exhibits, and at this time I feel that I am unable to inform the Examiner exactly as to whether I intend to take any rebuttal testimony or not or where, and I should also like to be given time for some statistical analysis before making a motion to strike any of the testimony or exhibits which have been introduced in this week of hearings.

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Hearing Examiner Hier: Well, I agree with you that you had a pretty heavy meal shoved at you for digestion.

Would January 20th be time enough for you to inform me as to whether or not you wished to put on any rebuttal or make any other move?

Mr. Mayer: I do not think so, sir, at the moment. Hearing Examiner Hier: How much time do you want?

Mr. Mayer: I should like until the end of the first week in February, somewhere in that neighborhood; I think I should be able to inform you definitely, sir.

(1056) Hearing Examiner Hier: Well, I shall not be able to resume hearings, if hearings are necessary, in this case before February, and neither will Mr. Barton.

The point I am getting at is that you cannot set a hearing two days, five days, or one thing or another after I get notification from you. So I was thinking about getting the notification from you a bit in advance of when you might have such additional hearings as are necessary. You say you do not believe you can accomplish this work before the end of the first week in February?

Mr. Mayer: I don't think so, sir.

Hearing Examiner Hier: I do not think it is an unreasonable request. However, I would like to get this case wound up before it is a year old though, and it will be a year old in June.

Mr. Mayer: Yes, sir.

Mr. Barton: We will move with expedition, I think all of us, Your Honor.

Hearing Examiner Hier: All right. You notify me by the 5th of February what your disposition is, and if you would desire more hearings, that is, if the 5th is

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not on a Sunday. I don't have a calendar here. If you desire more hearings for rebuttal purposes —

Mr. Barton: The 5th is a Sunday.

Hearing Examiner Hier: Make it the 6th.

(1057) If you want to take more proof, you advise me of the time and where you want to take it, and if that is the case, hearings will resume in this case, Mr. Barton, probably along the 20th, somewhere along in there, depending upon my other commitments which, at that time of the year, will be fairly heavy.

Mr. Barton: I have one commitment that is not yet fixed, that will be in February, argument, final argument, in Milwaukee, which I will know about—I take it that they will not begin before February 20, is that what we are now saying?

Hearing Examiner Hier: That is right.

Mr. Barton: I will try to fit that in.

Hearing Examiner Hier: They will not begin before February 20. They will probably begin around that date.

Mr. Barton: I will try to fit it in.

Hearing Examiner Hier: So that if we have to go out of town for this hearing I can make suitable arrangements.

Now, if you contemplate making any motions to strike a whole line of testimony and exhibits, then you might just as well at the time get up whatever memorandum of reasons which you have in mind, because this case will not be fresh in my mind come February 15, the 5th or 20th or anything else, and I will have to go over it again.

Furnish a copy to the other side.

Colloquy

Mr. Barton: We would like an opportunity, Your (1058) Honor, to file a counter-memorandum in the event there is one filed.

Hearing Examiner Hier: I think you can handle it orally, don't you?

Mr. Barton: Sir?

Hearing Examiner Hier: I think you can handle it orally. Neither one of you has got any precedent, I know that right now. I mean this question of whether or not testing the market is a defense to this type of case in the manner in which it has been done here is without precedent, as far as I know.

Mr. Barton: Your Honor, I think the concept of the meeting competition, and the legislative history and the statements which are made in a number of the cases on this whole subject of meeting competition, while not directly applicable, arguably applicable in the sense that we are not contending that testing the market is itself a defense. We are asserting that it is a part of the meeting competition defense.

Hearing Examiner Hier: Well, if I remember correctly, practically 95 per cent of the evidence which has been introduced here this week after Tuesday noon was tendered on not one or two or the third ground either, but on all three grounds, to wit: The equally low price of the competitor, section 2(b) of the Act, changing market conditions and, three, testing the market; that is correct, is it not?

Mr. Barton: That is true, Your Honor.

(1059) Hearing Examiner Hier: Because, if I recall correctly, I tried to pin you down on one ground or the other, and you skidded badly on definition.

Colloquy

All right, we are on three grounds then. You can keep that in mind if you are going to make such a motion. I haven't, as a result of listening to this testimony, changed my prima facie opinions about this being competent on meeting competition, but that does not mean they cannot be changed, by any means.

All right then, I guess that winds this up for the rest of this year.

Mr. Baker: May I have that last read back? (The reporter read the statement.)

Hearing Examiner Hier: What I mean by that, Mr. Baker, is the opinion I expressed the other day, namely, I believe, if you exercise your choice of meeting competition, your second choice, take the area, pick the area, in which you meet it, that you must justify it or prove it, it being in the nature of an affirmative defense by conditions in the area which you yourself pick, and not by conditions existing outside of that trading area, and in other places of the United States. I say that is the prima facie opinion I expressed the other day. I am still of the same opinion on that phase of it, but I am not going to go into a lot of discussion now. I may encourage him, I may encourage you, (1060) and we will just let it lay the way it is.

Mr. Baker: Since Your Honor is of that preliminary opinion, if Mr. Mayer submits a memorandum on this point, it is a major defense of Respondent in this case, and we would very, very much like to have ten days at least to answer that in writing before it is argued.

Hearing Examiner Hier: Well, I will cross that bridge when I get to it, Mr. Baker. I don't think you

Colloguy

have found from past experience with me that I have not given you ample opportunity to present your views.

Mr. Baker: That is correct.

Hearing Examiner Hier: I think the last one you unloaded on me ran around 250 pages.

Mr. Baker: I hope it was as impressive as it was lengthy.

Hearing Examiner Hier: We will cross that bridge when we get to it. Bear in mind that if I think this evidence does not constitute a defense on one ground, it does not mean that it may not be admissible or stay in the record on another ground.

Mr. Barton: We hope to persuade Your Honor that the legal concept of meeting competition is somewhat broader than the prima facie reaction.

Hearing Examiner Hier: I know you do. All right.

(Whereupon, at 2:35 p.m., December 16, 1955, the hearing in the above-entitled matter was adjourned.)

(1061)

Tuesday, May 15, 1956.

Met, pursuant to recess, at 10:05 a.m.

Before: Frank Hier, Hearing Examiner.

Appearances as before.

(1062) PROCEEDINGS

Hearing Examiner Hier: All right. Call your witness.

Mr. Mayer: We would like to call Mr. Busch, Mr. Examiner.

AUGUST A. BUSCH, JR., was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Mayer:

Q. Will you give the reporter your full name, Mr. Busch, and your business address.

A. August A. Busch, Jr., Anheuser-Busch, St. Louis, Missouri.

- Q. What position, Mr. Busch, do you hold with Anheuser-Busch?
 - A. I am President of the company.

Q. And how long have you been President of the company, sir?

A. Since the death of my brother, approximately ten years ago.

Q. And how long have you been associated with the company?

A. Practically all of my life.

- Q. Have you ever been associated with the company in any (1063) active sales capacity, Mr. Busch?
 - A. Yes, sir.
 - Q. And when was that, sir?
- A. I forget the exact date. I was Vice President in Charge of Sales and Production for a good many years.
- Q. Now, sir, what are the duties of your present office with the company?
- A. I think normally that of any president of any big company.
- Q. I take it, then, you take a very active interest and part in managing the affairs of the company, do you not, sir?
 - A. Certainly.
- Q. And, too, that you in your capacity stay pretty well informed about all of the aspects of the business conducted by Anheuser-Busch?
 - A. Certainly as much as possible, sir.
- Q. Now, sir, it was in 1953, was it not, that Anheuser-Busch became the Nation's leading beer seller, was it not, sir?
- A. We had been prior to that, and I don't recall the dates. We have been up and down; first and second positions.
- Q. And were you the Nation's leading seller in 1954, sir?
 - A. I believe we were.
 - Q. Now, Mr. Busch -
- (1064) A. No. Not in 1954. I take that back. We were not the leaders in 1954 if I recall correctly.
- Q. The record contains evidence setting forth reductions in price of Anheuser-Busch of its Budweiser beer in St. Louis at certain times, and now, sir, I would like

to ask you why did Anheuser-Busch lower the price of Budweiser in St. Louis and St. Louis County in Januarv of 1954?

A. Anheuser-Busch raised its prices in October, if I recall correctly, of 1953, and after raising the prices nationally with the exception of Missouri and Wisconsin, our sales started to decline.

We needed more volume to sustain the decline we had in the Mid-West.

Q. Now, sir, why did you further lower the price of Budweiser in St. Louis and St. Louis County to the price of Falstaff in June of 1954?

A. Our first reduction, I think, was 25 cents a case, and the date I don't remember. We endeavored to try to have the on-premise retail outlet give an extra push to our product by giving them more profit.

In the experiment in reducing the prices to St. Louis and St. Louis County we found that the off-premise sale did not react with that reduction in price.

Q. That was the reduction of January?

A. That is right.

(1065) Q. And that was the reason for lowering the price again in June?

A. That is one of the many reasons. We have many reasons for reducing our prices as we looked at it.

Q. Well, would you detail for me some other reasons. for lowering your price!

A. First of all, loss of volume of business.

Secondly, we picked St. Louis as an experimental end of it. Our competitors had told our consumers that Budweiser was extremely tart and bitter in taste.

We wanted to try out again whether that was a factor, whether the taste of Budweiser was what we claimed it was, superior to that of other products.

We had in St. Louis our own wholesale setup, which means that we deliver our own product direct to the retailers. We had our own sales force in St. Louis that we thought was a good one.

We wanted to judge again in St. Louis what would happen on the off-premise sale and the on-premise sale with the reduction in price to gain back the volume.

Another thing. St. Louis is a big metropolitan area. It is a good test market as we viewed it, and our chief competitor in that market in the Middle West at that time, and he is today, was Falstaff, a coin name, as I put it, as a regional product.

(1066) Q. Now, sir, with the statement with regard to loss of volume being one of the reasons, was there any particular area in which your loss of volume was more important to you that might have dictated that reduction in price in St. Louis?

A. It was through the Middle West to the Mid-West area, to the main.

Q. Well, isn't it a fact that there was a definite relationship between the Budweiser price reduction in January and the over-all Texas sales situation of Budweiser as it existed in late 1953, sir?

A. No question about that. And if I could have made our reduction in Texas instead of St. Louis, I think we would have done it without any argument.

Our principal reason for not making it in Texas was because Falstaff again has a plant in New Orleans which is located, as you well know, very close to Texas. We have freight rates out of St. Louis that are higher, and even today it would be a little bit more competitive because Falstaff has just acquired two more plants in the State of Texas, and they lead by a good majority in the State of Texas today.

Q. As a matter of fact, the Texas situation disturbed you so much you went down there in your private car personally, didn't you, sir?

(1067) A. I made many trips to Texas, yes.

- Q. And I also understand that you actually tended by yourself on occasion in an effort to find out what the consumer reaction was to Budweiser beer, why it wasn't going as well as you hoped it would, didn't you, sir?
 - A. That is correct.

Q. Now, sir, with relation to not cutting the price in the State of Texas, did you ever discuss this with any other members of your staff as to whether or not you might cut the price in Texas of Budweiser?

A. Yes. I think it was discussed. All of our problems were discussed after the October raise in 1953, and when our business started to slip off; we think that we have a heck of a responsibility not only to our employees, but to our stockholders, and when our business went off as drastically as it did, starting in November, as I recall it, and I believe we lost some 800,000 barrels of beer in 1954 and 170,000 barrels of beer in the first four months of 1955, it was certainly alarming, and we discussed many, many angles.

Q. Now, sir, paying particular attention to the Budweiser situation in Texas, didn't you as a matter of fact discuss this at length with your general counsel about the advisability of lowering the Budweiser price in the State

of Texas?

A. That could have been. I don't recall that spe-

cifically.

(1068) Q. As a matter of fact, he recommended against it, did he not, sir, for certain legal reasons?

A. No, that is not true, to the best of my recollection.

- Q. Do you have any particular independent recollection about ever having spoken to him about the possibility of reducing your price in the state of Texas?
- A. Yes. We did not pass on the tax increase in Texas in September of 1955, if I recall the date correctly. We discussed that. So, in effect, we lowered our prices or held our prices. We absorbed the tax in the state.
- Q. But in 1953 didn't you consult with him about lowering your price, your then price, in the state of Texas?
- A. I certainly might have, but I can't tell you distinctly that it was not advantageous for us because of the freight and because of our principal competitor, namely Falstaff, having a plant in New Orleans, and it was too costly to make that move.

The potentials certainly were greater in Texas volumewise than they were in St. Louis or St. Louis aren. It was very tempting. I imagine if we had had our plant built in New Orleans, we would have unquestionably reduced our prices in Texas.

- Q. If the plant had been constructed in New Orleans?
- A. Yes, sir.
- Q. As far as the location of the Falstaff plant is (1069) concerned, Mr. Busch, Falstaff also has a brewery located in St. Louis, Missouri, has it not?
 - A. That is correct.
- Q. Therefore, in St. Louis Falstaff had neither greater differentials or any other expense that it would not have had in St. Louis and shipping to Texas. Yet you still chose St. Louis as opposed to Texas, even though Falstaff had the same advantages in each area.

A. That is perfectly right.

Q. Now, sir, this record is replete, to say the least, with evidence concerning the growth of the Falstaff Brewing Company, and as a matter of fact, these price reductions of Anheuser-Busch in St. Louis actually were an attempt by Anheuser-Busch, were they not, to arrest the increasing sales volume of Falstaff in St. Louis and St. Louis County?

A. I think I would answer that this way. They were certainly set up to increase our volume, and to make experiments as we went along to see what happened on the off-premise sale and on the on-premise sale, and together timing the situation for us so that we could come out, and as we did when we raised our price after some seven months of the experiment, on the taste test problem for Budweiser, it is a coincidence, but I think about ten or fifteen days after we raised the price we came out with another product.

- Q. But at least part of the reason for this price reduction, (1070) as I understand it, was to arrest increasing sales volume of Falstaff in St. Louis and St. Louis County, was it not?
 - A. It was to give us more volume.
- Q. And to stop their increase in St. Louis and St. Louis County?
 - A. Competitive-wise, of course.
- Q. Now, sir, the date intrigues me, as of January 1954 price reduction-wise. Wasn't that date set because you were waiting until the end of the calendar year of 1953 to see what Falstaff was going to do with its prices in the Texas area?
 - A. Not at all, sir.
- Q. a All right, sir. dend 12 di santipomes local sendi

Then why was January selected as the original lowering of the price date?

- A. I can't recall that there was any significance put on January or February or any one month. Our sales were declining. We were trying to find out what to do about the gigantic loss that had started in our business and how we could arrest the losses we were sustaining.
- Q. Now, as a matter of fact, Mr. Busch, didn't you know that the labor contract of Falstaff might not run out until the end of the calendar year 1953?
- A. Their labor contracts run out the same time as ours do.
- Q. And you felt, didn't you, that if they were going to (1071) increase their prices, it might not be until the end of the calendar year 1953, didn't you, sir?
- A. I see no connection in your connecting together the labor contract and the price decrease of ourselves.
- Q. The national shippers increased their prices after the settlement of the brewers' strike in Milwaukee in 1953, did they not?
 - A. In October 1953.
- Q. Now, was that generally true of all the brewers throughout the country?
- A. No, sir. For the first time I think in the history of the brewing industry, when the large shipping brewers increased their price for the first time, as I recall it, in the brewing industry the regionals and locals in some areas did not increase their price.
 - Q. Did not increase their price?
 - A. That is correct.
- Q. And some of these regionals and locals were your three local competitors in St. Louis who were also competing with you in the State of Texas, were they not, sir?
 - A. Yes, sir.

Q. They were.

Now, sir, isn't it logical to assume that you waited until the end of the calendar year 1953 to see what the three locals were going to do with regard to price when (1072) their labor contracts came up prior to your reduction of price of Anheuser-Busch in St. Louis, Missouri?

- A. I still can't see any connection. No. Our adjustment wasn't made over what they were going to do. I imagine we wouldn't have done anything had they raised, to be perfectly frank and honest with you. But I don't get the connection with the labor contract or what they were going to do because of our reduction and the date we set for it.
- Q. Now, Mr. Busch, who first made the specific recommendation in your company with regard to lowering the price of Budweiser in St. Louis?
- A. As I specifically remember it, Mr. Hallquist, who was then Mid-West Regional Manager, made the recommendation to me on the reduction of price.
- Q. Now, as I understand from one of your previous answers, you had numerous conferences, and so forth, with regard to your particular sales situation existing at that time.
- A. There is no question about it at all. It was discussed by many of our officers at the plant, by some of our directors, as business decisions are usually discussed very thoroughly when a move like that has to be made.
- Q. Now, sir, what was Mr. Von Gontard's and Mr. Barsi's reaction to the recommendation to lower the price of Budweiser in St. Louis and St. Louis County only?

- A. I don't recall what their specific recommendations (1073) were.
- Q. Well, sir, did you receive any recommendations from any other members of your staff with regard to lowering your prices anywhere else other than in this city and county of St. Louis?
- A. No. It was talked of in many areas just like it was in Texas.
- Q. And could you outline for us the reasons why the other recommendations for lowering prices in other areas were not acceptable to you, sir?
- A. I think I answered it to begin with, that the freight situation is the big factor. Again, St. Louis is a big metropolitan area. Again, we have our own branch there, so that we would not be able to have to go to one of our wholesalers and ask him to make a reduction to the retailer.

We could better watch the situation and see the results if we did it in St. Louis.

We also have no warehousing problems in St. Louis, because we deliver direct from our lines because of our plant being located there. And management had a fine observation of what was going on in the reduction of price.

I might add there that I don't think price alone would have given us the increases that we had. We had the facilities, as a matter of fact, to entertain the retailers both on and off-premise.

(1074) Mr. Anheuser and myself, for example, invited out to Grants Farm, my mother's home, over 11,000 retailers in eleven nights. I think that was a very significant thing in helping us get our increases there.

My reason for that is that the on-premise retailer, even with a reduction in price, did not pass it on to the consumer, and even after seven months, approximately fifteen per cent of the retailers still kept the price of Budweiser five cents higher than that of our competitors.

(1075) Q. Would you say 85 per cent cooperation, let's call it, by the retailers was an insignificant percentage of retailers who lowered their price of Budweiser to the exact retail price of your competitive beer?

A. I certainly do. I can give you a perfect example of that.

We tried to roll back, so to speak, our prices in the State of Ohio after our increase. In the State of Ohio the retailer, because it goes to the wholesaler and then to the retailer, the retailers raised in a great many instances, a nickel across the bar in the on-premise sales. In some instances, 10 cents over the locals. We have just accomplished within the past few months after this roll-back occurred some two years ago, if I recall correctly, where we have now eliminated a 10-cent spread between local and regional beers over Budweiser.

Q. Now, sir, to get back to the lowering of your price at St. Louis, Missouri, have you or any of your executive or sales personnel ever stated that the failure of Falstaff, Griesedick Bros. and Griesedick Western, to have enough business sense, in your opinion, to increase prices subsequent to the National Brewers strike in 1950 was primarily responsible for the January price reduction in St. Louis?

A. I did not.

Q. I said you, or any of your executive or sales personnel.

(1076) A. I am quite sure that none of my executives would have said that. They have to speak for themselves. As far as I am concerned, I certainly did not.

Q. May I suggest, then, sir, that the failure of Falstaff and Griesedick Bros. and Griesedick Western to have business sense enough, in your opinion, to increase their prices after the settlement of the Milwaukee strike was the real reason for the price reduction of Budweiser in January 1954, was it not?

A. Competitive-wise, certainly.

Q. All right, sir. Now, may I suggest, too, that the relatively disappointing increase in sales subsequent to January of 1954, together with the low prices of Falstaff and Griesedick Bros. and Hyde Park in Texas, was the reason for the further price reduction in June of 1954, wasn't it, sir!

A. No. The further reduction in price came about again by the recommendation of Mr. Hallquist. We did enjoy a very nice increase with the first reduction of 25 cents, as I recall it, but not on the off-premise sales or the grocery store, and today the beer business in my opinion is changing very rapidly, and the off-premise outlets are becoming more important for the brewing industry than the on-premise outlets.

Q. Mr. Busch, from the testimony in the proceeding, I take it, or I know, that there was quite an extensive sales campaign (1077) conducted by Anheuser Busch in connection with your lower price similar to the activity which you described a moment ago, the entertainment of retailers, the bringing in of salesmen from the Chicago area, the announcement of the price reduction and the having the salesmen on the streets on Saturday when no

other competitive brewer had salesmen on the streets the

same day, and so on.

Now, also there were photostatic copies, as I understand it, of advertisements which had appeared in Texas newspapers showing the low prices of Falstaff and Hyde Park and Griesedick Bros. in Texas, and that these photostats were supplied to your drivers in St. Louis in connection with this sales campaign, were they not?

Mr. Barton: That is a rather involved question.

Hearing Examiner Hier: Let's ask the witness: Is it too involved for him.

The Witness: Frankly, Your Honor, if it happened, I don't know anything about it. That would be the way I would have to answer it.

Hearing Examiner Hier: In other words, you can't

answer it?

The Witness: I can't answer it, sir. Hearing Examiner Hier: Rephrase it.

By Mr. Mayer:

- Q. Mr. Busch, didn't you hold meetings with your salesmen (1078) prior to announcing the price reduction in St. Louis?
 - A. I certainly did.
- Q. And in connection with the lowering of the price of Budweiser in St. Louis and St. Louis County, didn't you also hold meetings with your drivers on occasion?
- A. Our drivers are our salesmen, so we call them driver-salesmen. I misunderstood you. I assumed you meant driver-salesmen.
- Q. Now, sir-
- set A. Yes, I did we dold carries out wester of mosts

Q. Now, in one of these meetings, weren't your driver-salesmen supplied with photostatic copies of advertising showing low prices of Falstaff, Griesedick Bros. and Hyde Park, as they were advertised in Texas newspapers?

A. Not when I was present at any of those meetings,

to the best of my recollection.

Q. Was it done at any meeting other than one at which you were present?

A. That, I can't answer you, again.

Q. Mr. Busch, on Exhibits 43 and 44, Commission Exhibits 43 and 44, reference is made there by your salesmen to Mr. Busch's story as he told it to prospective purchasers of Budweiser in St. Louis.

Now, sir, would you tell us what that story was?

A. What I told my salesmen?

(1079) Q. Yes, sir.

A. In brief, that they had a great advantage because our price now was down to the regional beers; that it was now the time to test Budweiser, that they had been told and our competitors had used it against us, that Budweiser was too tart and that is the reason that sales were going very slowly in St. Louis. They had no excuses whatsoever any longer, that they should try to have the consumer test Budweiser as against Falstaff because of the price situation, that they should go and work on the on-or-off premise retail outlets to the best of their ability and that they should spend as much time contacting the trade as they possibly could.

Q. May I suggest another facet of that story, Mr. Busch, which you might have overlooked. That, in an effort to relieve the stigma which might attach to the

nation's leading seller for being a price cutter in its own home town, that you informed these salesmen to inform the prospective customers that in reality this was merely a reduction of price by Anheuser-Busch to meet, if we may use that language, the price reduction of Griesedieck Bros., Falstaff and Hyde Park as it then existed in Texas.

A. No, I don't recall that a bit.

Mr. Mayer: That is all we have, Mr. Examiner, for Mr. Busch.

Hearing Examiner Hier: Cross examination?

(1080) Mr. Barton: May we have a couple of minutes, Your Honor?

Hearing Examiner Hier: Off the record. We will take a short recess.

(A short recess was taken.)

Hearing Examiner Hier: On the record.

Mr. Barton: No questions.

Hearing Examiner Hier: Do you have anything further?

Mr. Mayer: No, sir.

Hearing Examiner Hier: You are excused.

Mr. Mayer: Mr. Examiner, may we have a few moments to get a few tabulations ready before we put the next witness on?

Hearing Examiner Hier: How much time do you want?

Mr. Mayer: Not more than five minutes, sir.

Hearing Examiner Hier: All right. Let's suspend for five minutes.

Ferd Gutting, for Commission—Direct

(A short recess was taken.)

Hearing Examiner Hier: On the record.

Mr. Mayer: Mr. Examiner, we would like to call at this time Mr. Ferd Gutting.

FERD GUTTING was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination (1081) by Mr. Mayer:

- Q. Now, Mr. Gutting, would you state your business address, please?
- A. Griesedieck Bros. Brewery Company, St. Louis, Missouri.
- Q. And are you here today in response to a subpoena, sir?
 - A. Yes, sir, I am.
- Q. In what capacity are you employed by Griesedieck Bros.?
 - A. I am employed as Comptroller of the company.
- Q. And how long have you been employed in that capacity?
 - A. Approximately fourteen years.
- Q. Generally, Mr. Gutting, what are your duties as Comptroller for the Company?
- A. Generally, I am responsible for all record keeping of the company, including the accounting functions, payment of bills for merchandise and services, and also financial matters.
- Q. I take it, then, you are the official custodian of the books and records of the company, is that right?
 - A. Yes, sir, I am.

Ferd Gutting, for Commission-Direct

Q. Now, Mr. Gutting, at my request have you prepared several sales tabulations reflecting the sales of your company for the calendar years 1952, 1953, 1954, and 1955?

A. Yes, sir.

Q. Would you hand those to me, please, sir?

Mr. Mayer: At this time, Mr. Examiner, I should like to have marked as Commission's Exhibit for identification (1082) 69-A, B, C, and D, a full page document headed "Griesedieck Bros. Brewery Company Sales."

Hearing Examiner Hier: What year?

Mr. Mayer: Each year is separately indicated on it for 1952, 1953, 1954, and 1955.

(The document referred to was marked Commission's Exhibit No. 69-A through D for identification.)

Mr. Mayer: I should also like to have marked as Commission's Exhibit 70 for identification a one-page document headed "Sales Comparisons".

Hearing Examiner Hier: Comparisons between what?

Mr. Mayer: The explanation is on the exhibit, sir.

Comparison between various purchasers inside and outside of St. Louis.

(The document referred to was marked Commission's Exhibit 70 for identification.)

Mr. Mayer: I should also like to have marked as Exhibit 71 for identification a one-page document headed "Anheuser-Busch, Incorporated, (barrels sold)".

Ferd Gutting, for Commission-Direct

(The document referred to was marked Commission's Exhibit No. 71 for identification.)

(1083) Hearing Examiner Hier: For what years are the last two exhibits?

Mr. Mayer: Commission Exhibit 70 is a summary of Commission Exhibit 69 and pertains to the years 1953, 1954, and 1955.

Commission's Exhibit 71 pertains to 1953, 1954, and 1955.

Mr. Barton: Who prepared 71?

Mr. Mayer: We will ask the witness that.

. Hearing Examiner Hier: Have those been marked?

Mr. Mayer: Yes, sir. I have marked them.

Hearing Examiner Hier: All right.

By Mr. Mayer:

- Q. Now, Mr. Gutting, were those exhibits prepared by you, sir, or directly under your supervision.
 - A. Yes, sir.
- Q. Now, directing your attention to Commission's Exhibit for identification 69 and particularly in regard to 69-A, would you tell us, sir, the source or sources of the information contained in the various columns in that particular exhibit?
- A. These figures were taken from a historical record that is kept by our company on a daily basis by sales divisions and by packages.
- Q. And are they books and records which you keep in the normal course of your business?

(1084) A. Yes, sir.

Q. Now, sir, would you direct your attention to Commission's Exhibit 69-A and explain for us, sir, the mean-

Ferd Gutting, for Commission-Direct

ing of the various headings and the various figures which appear on that exhibit?

A. Yes, sir.

First of all, the notation appears on there that all cases are in terms of 24 twelve-ounce. By this, I mean that the various types of package goods that are sold, whether they are cases of seven-ounce bottles or quart bottles or what have you, they are all interpreted in this schedule in terms of cases of 24 twelve-ounce bottles. The tabulation is broken down into three sales divisions of our company, St. Louis and county, East St. Louis, wholesalers, and then those figures are all brought into totals, horizontally. Each of those sales divisions is broken down into draught beer and package beer. Draught beer is shown in terms of barrels and package beer is shown in terms of cases of 24 twelve-ounce denominations. The report further indicates six months sub-totals and totals for the year.

Q. Now, Mr. Gutting, by combining the East St. Louis purchases and the wholesale purchases, we do get the totals, don't we, of the company business done outside the limits of St. Louis and St. Louis County?

A. That is correct.

(1085) Q. Now, sir, directing your attention to Commission's Exhibit for identification 70, sir, would you explain for us the headings of the various columns and the meaning of the various figures appearing thereon?

A. This exhibit is a summary of the exhibit which we have just discussed. It is a matter of tabulating the six-months totals of each year and breaking them down into the same sales divisions as the previous exhibit.

Ferd Gutting, for Commission—Direct

Q. Now, sir, as I understand it, then, all of the figures appearing before the entry in the left-hand column, Anheuser-Busch, Inc., are taken directly from the figures appearing on Commission's Exhibit for identification 69, are they not?

A. Well, they are the figures as tabulated on your Exhibit 71 and are brought to this summary.

Q. All right, sir.

Now, directing your attention to Commission's Exhibit for identification 71 —

Hearing Examiner Hier: Just a moment before you get to that.

The last two columns to the right hand side on Exhibit 70 across from the notation "Anheuser-Busch, Inc." the figures are not complete. Why is that?

Mr. Mayer: I am going to explain that, sir, with the identification of the next exhibit which supports the information appearing on it.

(1086) Hearing Examiner Hier: All right.

By Mr. Mayer:

- Q. Now, directing your attention to Commission's Exhibit for identification 71, Mr. Gutting, as I understand it, all of the figures appearing on Commission's Exhibit for identification 71 are taken directly from the quarterly and annual reports of the Anheuser-Busch Company for the various quarters indicated, are they not, sir?
 - A. Yes, sir.
- Q. And, as I understand it, in 1955, the reports themselves rounded off into — they rounded the figures off into

Ferd Gutting, for Commission—Direct

the hundreds of thousands as they appear on Commission's Exhibit for identification 71.

A. For the year 1955, their quarterly reports did not indicate the barrelage for the particular quarter, but the annual report to the stockholders did report the total barrelage and also in summary form, reported the quarterly sales as they are shown on the exhibit.

Q. Now, sir, directing your attention to Commission's Exhibit for identification 70, and in particular to the heading, "Brewery Total" under "Anheuser-Busch, Inc.", do the figures appearing opposite that company represent the total sales in barrels of all the brewing facilities of the Anheuser-Busch?

A. Yes, sir, as they were reported to their stock-holders.

(1087) Q. Now, sir, with relation to the heading "Missouri Tax paid withdrawals" on Commission Exhibit for identification 70, does that include all of the tax paid withdrawals of all the brewing facilities located within the State of Missouri?

A. That is correct.

Q. Now, Mr. Gutting, have you had an opportunity to make a spot check of Commission's Exhibit for identification 69 with regard to the figures appearing thereon as compared to the figures appearing on Respondent's Exhibit 181

A. Yes, sir, I have.

Q. And what were the results, sir, of that spot check?

A. I find, sir, that the figures are correct with the following explanation:

On Exhibit 18, cases of quarts were reported on that form in terms of statistical cases and were not converted to 24 twelve-ounce terms. There is a difference.

Ferd Gutting, for Commission-Cross

Q. As I understand it, then, in converting the case quarts into the actual 24 twelve-ounce cases that you have stated on Exhibit for identification 69, the figures do check then, with the figures appearing on Respondent's Exhibit 18.

A. That is correct.

Mr. Mayer: Mr. Examiner, at this time we should like to offer into evidence Commission's Exhibits for identification 69, 70 and 71.

(1088) Mr. Barton: No objection. Hearing Examiner Hier: Admitted.

(The documents heretofore marked Commission's Exhibits 69, 70 and 71 for identification, were received in evidence.)

Mr. Mayer: That is all we have of Mr. Gutting. Hearing Examiner Hier: Cross examination?

Cross examination

Mr. Barton: I would like to have this marked as the next exhibit.

Hearing Examiner Hier: 179 is the Respondent's next exhibit.

Two pages?

Mr. Barton: Yes, Your Honor.

Hearing Examiner Hier: 179-A and B, a two-page document headed, "Griesedieck Bros. Package Beer Losses, (24 12-ounce equivalent cases) in St. Louis and St. Louis County, compared to losses outside."

(The document referred to was marked Respondent's Exhibit 179-A and B for identification.)

Ferd Gutting, for Commission—Redirect

By Mr. Barton:

Q. I show you Exhibit 179-A and B and ask you whether it isn't a fact that the figures that are contained on this (1089) exhibit conform to Exhibit 69, Commission Exhibit 69-A through D. Have you had an opportunity to check that?

A. I have had an opportunity to check several figures

and they are correct.

Mr. Barton: If Your Honor please, I offer in evidence 179-A and B.

Mr. Mayer: No objection.

Hearing Examiner Hier: Admitted.

(The document heretofore marked Respondent's Exhibit 179-A and B for identification was received in evidence.)

Mr. Mayer: Now, may I ask the witness a question about this particular exhibit?

Hearing Examiner Hier: Yes.

Redirect examination by Mr. Mayer:

- Q. Mr. Gutting, would you comment for me upon the comparisons made in Respondent's Exhibit 179-A and 179-B?
- A. I have no comment to make regarding the actual number of cases involved in the exhibit, but the figure appearing behind "Percent of Loss" does not actually reflect the loss of business. The percentages shown merely reflect losses and they relate to each other and do not reflect the percent of loss of business.

Ferd Gutting, for Commission—Recross

(1090) Hearing Examiner Hier: What do you mean by losses as they reflect to each other? I don't understand that term.

The Witness: If you will notice, the percentages total horizontally to 100 per cent, and the figure under "St. Louis City and County", for example, is 27.7 per cent.

It merely means that the 132,593 case loss in St. Louis and St. Louis County represents 27.7 per cent of a total loss for the brewery of 477,135 cases.

Hearing Examiner Hier: All right.

Mr. Mayer: That is all we have.

Mr. Barton: I would like to ask one other question.

Recross examination by Mr. Barton:

Q. Mr. Gutting, I think you answered that Commission Exhibit 70 was a summary of all the information contained on Commission Exhibit 69-A through D. Isn't that right?

A. It is a summary of the information for the years 1953, 1954, and 1955.

(1091) Q. You did not mean to infer that it was a summary which took into consideration Commission Exhibit 69-A, which are the figures for 1952?

A. I did not.

Q. And why was the summary made up without taking into account the 1952 figures?

A. Frankly, there was no particular reason for it, it's just that I didn't know that 1952 was wanted on that particular sheet.

Mr. Barton: That is all.

Mr. Mayer: We have no further questions.

Hearing Examiner Hier: Thank you, Mr. Gutting.

A. D. Jones, for Commission-Direct

Mr. Mayer: Now, sir, at this time we should like to call Mr. A. D. Jones.

A. D. JONES was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. Mayer:

- Q. Mr. Jones, will you give your full name, please, sir, to the reporter.
 - A. Allen D. Jones.
- Q. And are you employed by the Federal Trade Commission, Mr. Jones?
 - A. I am.

(1092) Q. In what capacity?

- A. As an accountant.
- Q. How long have you been employed by the Commission in that capacity?
 - A. Twenty-one years.
- Q. Now, Mr. Jones, at my request, did you prepare certain tabulations based upon the September 1955 survey conducted by Anheuser-Busch?
 - A. I did.

Mr. Mayer: At this time, Mr. Examiner, I should like to mark for identification as Commission's Exhibit for identification 72 a one-page document headed "Docket 6331, Anheuser-Busch, Inc. sale of 48 12-ounce cans to retailers."

I'm sorry. For No. 72 I would like to mark the Exhibit headed "Sale of 24 12-ounce bottles to retailers," a one-page document, and I would like to mark for Com-

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mission's Exhibit for identification 73 a one-page document headed "Sale of 48 12-ounce cans to retailers."

By Mr. Mayer:

Q. Now, Mr. Jones, directing your attention to exhibit marked Commission's Exhibit 72 for identification, sir, and selecting the name of the state, Wisconsin, appearing in the extreme left-hand column, sir, would you state column by column what the figures represent progressively across the page?

(1093) A. In the first column under "Number of Cities" appears the figure 7, which is the number of markets or cities sampled in which local or regional beers, the price of local or regional beers, equaled or exceeded the price of Budweiser beer.

The next column shown headed "Old Style" shows the figure 4 as representing that the price of old style beer in four markets was equal to or exceeded the price of Budweiser beer.

In the next column under the heading "Heilmans" appears the figure 4 which represents in four markets the price of Heilmans beer as being equal or exceeding the price of Budweiser.

And then we go over under the heading "Gettlemans," which shows that there were two markets of which the price of Gettlemans beer equaled or exceeded the price of Budweiser beer.

In the next column under "Grainbelt" that indicates that in one market the price of Grainbelt beer was equal to or greater than Budweiser beer.

And under the column headed "Thomas" it shows that in one market the price of Thomas beer was equal to or greater than the price of Budweiser beer.

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And in the last column, "Total Number of Cities Sampled" that shows that there were 14 markets sampled in the State of Wisconsin.

(1094) Q. Now, sir, again with regard to Commission's Exhibit for identification 72, would you explain the entry near the bottom of the exhibit, "Total for Other 31 States."

A. There were 31 states—this is according to the market samples. There were 31 states in which there were no markets where local or regional beers—the price of regional or local beers equaled or exceeded the price of Budweiser, and in these 31 states there were 413 markets sampled.

Q. Now, Mr. Jones, would the same explanation that you have given for Commission's Exhibit for identification 72 apply to the entries appearing on Commission's

Exhibit for identification 731

A. Yes.

Mr. Mayer: Mr. Examiner, in preparing to offer Commission's Exhibit for identification 72 and 73, I should like to state that these two exhibits were drawn up at my request in order to point up what I think is a clear picture of the same basic data from which respondent's Exhibits 145 and 146 were taken. These exhibits represent all of the shipping points, with some exceptions which I shall enumerate later, surveyed by the respondent.

In making these exhibits and at my suggestion or direction there were several eliminations made, not of shipping points but of products. I have caused to be eliminated from Commission's Exhibits for identification 72 and 73 several (1095) entries concerning products

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which appear on Respondent's Exhibits 145 and 146. We have eliminated entries relating to Carling's ale. We have eliminated entries relating to Narragansett ale. We have eliminated entries with relation to Ballantine's ale. And we have also eliminated in every instance in which Ballantine's was not reported as either a beer or an ale.

Now, it will be recalled that Mr. Shire was not interested in separating the ales from the beers and, therefore, in his Exhibits 145 and 146 he threw them all into the same pot.

Now, we think it is more accurate in comparing prices to compare the prices of beers rather than to compare the prices of beer with ale. In other words, compare the price of beer with beer, the price of ale with ale.

Now, in these reports, Ballantine's was never demonstrated as a beer in the report. It was never priced equal to or equal or above Budweiser, and by the same token Ballantine's beer in the report was always priced, without exception, lower than when reported on the same form as Ballantine's ale.

Now, perhaps the two major eliminations have been the eliminations of Hamm's and Blatz. We have eliminated these two beers on the basis of one of the Respondent's Exhibits which is in this record as Respondent's Exhibit 152. To bring it to the Examiner's attention graphically, the Respondent's (1096) Exhibit 152 is headed as "Comparison of Blatz prices with Budweiser prices in local and regional prices." It shows that the number of markets mentioned were 120. It shows that in five of those markets in relation to the bottled beers there were no reports as to Blatz prices, so that we are really

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dealing with 115 markets mentioned with regard to the bottled.

By their own figures on this exhibit, Blatz is priced above local and regional beers in 108 of the points out of the 115 surveyed. It is our contention that that makes Blatz definitely and positively a premium priced beer, and, therefore, it should not be included in any exhibit in which it is attempted to compare the prices of Budweiser with the prices of local and regional beers.

Also, the tabulations of the Anheuser-Busch survey itself show that Hamm's is, practically speaking, in the identical situation. It is almost exactly the same as the information appearing on the Blatz exhibit. And in approximately one-half of the instances of reporting by Budweiser's own wholesalers, Hamm's was reported as a national shipping beer.

Hearing Examiner Hier: Are you contending in this case that these two beers you mentioned are national beers in defense of Budweiser, Schlitz, and Blatz?

Mr. Mayer: Yes, sir, they are premium priced beers. Hearing Examiner Hier: Are you contending that they are nationally sold?

(1097) Mr. Mayer: They are sold in approximately 25 or 30 states, and I would call that fairly close to national distribution.

At this time, Mr. Chairman, we should like to offer in evidence Commission's Exhibits 72 and 73 for identification.

Mr. Barton: If your Honor please, I object. I would like to defer ruling until I have had an opportunity to cross-examine the witness.

Hearing Examiner Hier: All right. We will hold it up until then.

Mr. Barton: Might I say that counsel's statement sounds like brief material rather than a matter of proof.

Are you through with your witness?

Mr. Mayer: He is entirely yours. I am entirely finished.

(1098) Cross examination by Mr. Barton:

Q. Mr. Jones, what was the objective in the preparation of exhibits 72 and 731

Mr. Mayer: I object to that, with no question asked Mr. Jones of the objective of these exhibits nor what they purport to show. These exhibits were done at my direction and according to my statement.

Mr. Barton: Unfortunately I can't put you on the stand.

Mr. Mayer: You can ask plenty of questions about the accuracy of those figures. Since it comes from their books and records, we can argue about the exhibit, what the exhibit shows at any time.

Hearing Examiner Hier: Objection is overruled. Answer the question. What is the question?

(Question read by the reporter: Mr. Jones, what was the objective in the preparation of Exhibits 72 and 73?)

The Witness: I don't know what he means by objective. So far as I know, I was requested to make this tabulation to show data as contained in the headings of these exhibits.

By Mr. Barton:

Q. Were you given any criterion to determine what regional and local beers were to be?

(1099) A. As marked on those survey sheets.

Q. Pardont

A: As marked on the survey sheets.

Q. You mean you took — you included as regional beers all beers which were marked as regional beers on the survey sheets?

A. Well, let's take it the other way around. For instance, the beers which—there is Budweiser, Schlitz, Pabst, and Millers. I believe that is the four national beers.

Q. Yes.

A. As national beers, and the others were then either regional or local.

Q. All others besides those four were regional or

local beers, is that right?

A. Well, that is the way they were marked on the sheets.

Q. Is that the way you—is that what you took in the preparation of these Exhibits 72 and 73 as the criterion for local and regional beers which are mentioned on that exhibit?

A. Well, with the elimination of Blatz, Hamm's and ales that were mentioned, Ballantine's, Carling's and

Narragansett.

Q. Why did you eliminate Hamm's? What was the criterion you used to eliminate Hamm's as a regional beer despite the fact that it was the survey form as a regional beer?

A. I eliminated it per instructions of the attorney.

- Q. What was the basis of that instruction?
- A. He just told me to eliminate it.
- (1100) Q. You didn't make any independent determination to eliminate it based on some criterion as to whether or not it was a national or regional beer?
- A. I told you, I said I made it up at the attorney's instruction on the basis of his instructions.
- Q. Well, now, when you prepared this form, you have a legend down here saying the prices of local and regional beers were equal or greater than Budweiser in 43 of 723 cities sampled, or 5.95 per cent. Those are your words, aren't they?
 - A. That is right.
- Q. Now, what did you mean when you said local and regional beers?
- A. I mean just what I said, with the exception of the beers as marked regional and local, with the exception of Blatz and Hamm's, Ballantine ale, Carling's and Narragansett ale.
 - Q. Did you go through and find out how many states Hamm's was marketed in the examination of this survey?
 - A. I think so.
 - Q. And in the course of your preparation of the survey, you included Hamm's at one time as one of the beers to compare Budweiser against, didn't you?

Mr. Mayer: I object to that.

Mr. Barton; Wait a moment, please.

Mr. Mayer: He is bound by what the exhibit is. (1101) What he discarded two years ago has nothing to do with what the exhibit offers.

Hearing Examiner Hier: What is the point?

Mr. Barton: I want to show they have made up the tabulation based on including Hamm's in here and then when it came out with too many areas, that Hamm's was the same price in, they threw that out and got it winnowed down to something that apparently on its face would support Mr. Mayer's point.

Mr. Mayer: I have admitted that.

Hearing Examiner Hier: There is nothing new about that, Mr. Barton. I very rarely get a purely objective exhibit from counsel, you know that.

Mr. Barton: Your Honor, I submit ours have been objective. The facts are there.

Hearing Examiner Hier: Counsel admits you are kicking a dead horse around. Let's go to something else.

Mr. Barton: The thing that bothers me, if this is admitted into evidence, I have to offer into evidence the survey forms themselves, all 700 of them, because it is my contention that this exhibit is misleading and does not properly represent the survey forms themselves because of the matter of definition of what is a regional or local beer.

Moreover, there is a question of what is the significance of this language contained on the exhibit, equal to or greater than prices of Budweiser.

(1102) Hearing Examiner Hier: You mean to say that I cannot take respondent's Exhibits 145 and 146 and 152 and compare them with these two presently tendered exhibits?

Mr. Barton: I'm afraid you can't.

Hearing Examiner Hier: And do you further mean to say that you two gentlemen by such comparisons can't present your respective side of the picture more clearly?

Mr. Barton: I'm afraid you can't because what 145 and 146 are, they are charts, tabulations, based upon selection on a purely representative sample basis, the largest market in the states, and then the first two alphabetically, without designation of the particular brand which is the regional or local in each case.

In other words, it is the high regional.

Now, we submit to Your Honor that a further important point is that a survey which merely describes, which merely compares those beers which are equal to or greater is entirely misleading because the fact is that in large numbers of areas, in the Midwest, Hamm's and Coors are sold to the retail at prices that are, say, five, six, ten, fifteen cents differential with Budweiser. But when it gets into the consumer market, the price is the same.

And incidentally, Coors is eleven ounces as against twelve ounces, so even on the basis of comparing the price per ounce, the Coors price in those cases is higher. But in the (1103) preparation of this exhibit Coors was included only where the price was the same or in excess even though the differential might only have been accounted for by the fact that one was eleven ounce and the other twel e ounce, or that the differential was not substantial enough to have any effect in the consumer market over the bar or off-premise.

(1104) Hearing Examiner Hier: You can point all that out in your briefs, in your posed findings, can you not?

Mr. Barton: I don't think so, based upon the evidence, because we won't have in evidence the actual exhibits, the actual survey forms. If this goes in evidence

then an argument can be made by counsel that this is the fact and I will have no basis for referring to anything in the record which will establish the points which I am making now.

Mr. Mayer: May I be heard, Mr. Examiner?

Hearing Examiner Hier: Yes, sir.

Mr. Mayer: First of all, his comments were with relation, as I understand him, to consumer prices. He has an exhibit in here as long as a roll of wall paper with consumer prices. These Exhibits do not intend to reflect consumer prices. They don't mention consumer prices. They are directed only to retailer prices and I can't make any franker explanation about what has been eliminated from the particular reports which he received and the drawing up of these Exhibits.

He evidently is not questioning the accuracy. He is

merely questioning the elimination of them.

Hearing Examiner Hier: The completeness.

Mr. Barton: That is right.

Mr. Mayer: His own Exhibit doesn't show all the

(1105) shipping points.

Hearing Examiner Hier: You know the lack of completeness is not a cause of rejection for any Exhibit unless the lack is so gross that then it becomes incomprehensible or is grossly misleading.

Mr. Barton: That is our contention, that it is grossly

misleading.

Hearing Examiner Hier: I don't think any of us are going to be misled to that extent with the statistics end of the material that is in the record here.

Mr. Barton: I am not concerned that you may be misled. You have heard it. You have seen all the wit-

nesses testify. You have seen the survey forms, or at least have seen references to them and what they are. Whereas, when this matter gets before a body when they are looking at a record alone, that information won't be available and I am concerned that a grossly misleading Exhibit should be introduced in this record by counsel to which he will constantly refer, not perhaps before you, Your Honor, but later, and we will have no basis for it being grossly misleading.

Hearing Examiner Hier: Well, so long as it is accurate, if you want to attack its accuracy, you go ahead, but so long as it is accurate, I will admit it, and you may admit in contradiction thereof, or further explanation or modification or anything else you want an equally misleading Exhibit.

(1106) Mr. Mayer: He has already done that.

(The documents heretofore marked Commission's Exhibits 72 and 73 for identifiation were received in evidence.)

Mr. Barton: I think Mr. Mayer said that the basis for elimination of Hamms is that Hamms was listed as a national on the reports from the wholesaler, is that right?

Mr. Mayer: No, sir. I said in many instances, approximating 50 per cent, the wholesaler, himself, reported it as national and Mr. Schine or his assistants changed it to regional.

Mr. Barton: I would like the witness to look at the survey forms from the State of Minnesota and tell us how Hamms is listed by the wholesaler.

Hearing Examiner Hier: Are those in evidence?

Mr. Barton: No.

Hearing Examiner Hier: You can't have the witness talking about a paper not in evidence. You will either have to mark it for identification, or offer it, or do both. His replies will be unintelligible, not only at that level, but above.

Mr. Barton: I ask that the folder for Minnesota and the papers in it be marked as the next Exhibit.

Hearing Examiner Hier: Let's see how we can do this. I guess you are going to have to give each one

of these a separate letter.

(1107) Mr. Mayer: Mr. Examiner, may I suggest that we are beyond the scope here. Hasn't this witness already answered that there were exclusions made at my direction?

Mr. Barton: Your Honor, I submit he can't cut me

off from cross-examination by testifying himself.

Mr. Mayer: I am not attempting to. I merely want

him to follow the regular lines of examination.

Hearing Examiner Hier: He uses this in the Exhibit, Mr. Mayer, the phrases local, regional and national, perhaps not national, but certainly local and regional. Counsel is entitled to an explanation from the witness in what sense he is using those two terms, why this was left out and why that was put in, in addition to your explanation.

Mr. Mayer: I think he already answered that on one

of the first questions on cross examination.

Hearing Examiner Hier: I don't agree.

Have you got any more of these to mark?

Mr. Barton: Yes, Your Honor.

Hearing Examiner Hier: Well, you might as well go out in the hall and smoke while I get busy.

(A recess was taken.)

Hearing Examiner Hier: Back on the record.

There has been marked for identification Respondent's Exhibits 180-A through K, the pricing survey sheets which form the basic material from which Respondents' Exhibits 145 and (1108) 146 were compiled for the State of Alabama.

181-A through J is the same material for the State of Arizona.

182-A through O is the same material for the State of Arkansas.

183-A through FF—that is misnumbered but we will have to let it go—is the same material for the State of California.

184-A through G is the same material for the State of Colorado.

185-A through D for the State of Connecticut.

186 for the State of Delaware.

187-A through N for the State of Florida.

188-A through M for the State of Georgia.

189-A through M for the State of Idaho.

190-A through Z-19 for the State of Illinois.

191-A through Z-24 for the State of Indiana.

192-A through T for the State of Iowa.

193-A through T for the State of Kansas.

194-A through N for the State of Kentucky.

195-A through H for the State of Louisiana.

196-A through D for the State of Maine.

197-A through J for the State of Maryland.

198-A through I for the State of Massachusetts.

199-A through Z-2 for the State of Michigan.

(1109) 200-A through K for the State of Minnesota.

201-A through K for the State of Mississippi.

202-A through Z-2 for the State of Missouri.

203-A through N for the State of Montana.

204-A through K for the State of Nebraska.

205-A through F for the State of New Hampshire.

206-A through G for the State of New Jersey

207-A through H for the State of Nevada.

208-A through C for the State of New Mexico.

209-A through Z-11 for the State of New York.

210-A through O for the State of North Carolina.

211-A through F for the State of North Dakota.

212-A through Z-3 for the State of Ohio.

213-A through T for the State of Oklahoma.

214-A through N for the State of Oregon.

215-A through Z-13 for the State of Pennsylvania.

216 for Rhode Island.

217-A through J for the State of South Carolina.

218-A through D for South Dakota.

219-A through K for Tennessee.

220-A through Z-8 for Texas.

221-A through D for Utah.

222-A and B for Vermont.

223-A through Q for Virginia.

224-A through K for the State of Washington.

(1110) 225-A through P for the State of West Virginia.

226-A through N for the State of Wisconsin.

227-A through F for the State of Wyoming.

228-A through D for Hawaii.

It sounds like a political convention roll call.

Mr. Barton: Your Honor, I offer in evidence -